

UNIVERSITI TEKNOLOGI MARA

**MEDICAL NEGLIGENCE :
JUDICIAL PROCESS AFFECTING BOLAM
PRINCIPLE**

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Thesis submitted in fulfilment of the requirements
for the degree of
Master of Law

Faculty of Law

January 2010

ABSTRACT

This dissertation is about the judicial process by various jurisdictions affecting Bolam principle, the traditional pillars of medical law which responds to the growing interest in medical negligence, a common form of medical malpractice. It is about medical practitioner's standard of care and the patient's autonomy. Medical practitioners are increasingly confronted by ethical issues involving the issues arising from the provisions of information, diagnosis and treatment in relation to duty and standard of care expected from the medical practitioners in administering patients while in their care.

The first part of the Bolam principle mentions that the doctor is not negligent if he has acted according to an accepted medical practice. A practice accepted as proper by a responsible body of medical opinion. If the doctor has complied with this practice, there is strong evidence that the doctor is not negligent, regardless of whether there is more than one accepted practice by other bodies of responsible medical opinion.

Medical ethics stress the autonomy of the patient or recipient of health care. Often known as self-determination which sees human beings as having unconditional intrinsic value and having the capacity for rational choice where in order to be autonomous, a person must be free of external control as well as be in control of his affairs with exception of some persons who cannot act autonomously because they are incapacitated, ignorant, immature or coerced.

From time in memorial, medical practices had been regarded as a noble profession in United Kingdom and other jurisdictions. Since then, it is evidenced that the courts had demonstrated its judicial attitude in protecting this noble profession and indirectly discouraging medical claims or litigations against the doctors in the event of negligence or mishaps.

The issue of doctors' negligence in treating their patients became a great concern of the public. The common law developed and it is accepted that doctors owe a duty of care to their patients. The controversial issues in this area of law is particularly on the standard of care expected from the doctors in treating their patients while in their care is unavoidable.

The judges in court of laws then developed principles and approaches in confronting or resolving this thorny issue. In 1957 McNair J in *Bolam v Friern Hospital Management Committee* (1957) 1 WLR 582 profounded a test commonly known as the Bolam test to resolve the issue of standard of care expected from a doctor. This test seems to strengthen the shield that protected the medical practitioners against medical litigation whereby total reliance on the opinion of the medical experts is the deciding factor on this issue.

ACKNOWLEDGEMENTS

Bismillah hirroh manirrohim.

In the name of Allah the Great, Most Gracious and Most Merciful.

Assalamualaikum warahmatullah hiwabarokatuh.

This dissertation is dedicated to my late parents Allahyarham Ku Ismail bin Ku Mat and Allahyarham Dhaharah binti Mat, my wife Wan Siti Nurizah binti Wan Yusoff, my children Ku Nur Farah Zahirah, Ku Nur Diana Zulaikha, Ku Mohd Noor Hishamuddin, Ku Nur Elina Shaheeda, Ku Mohd Amirul Akmar, Ku Mohd Rahmat, Ku Mohd Sufi Arief and Ku Mohd Sufi Amin, my son in law Muhammad Nur Hakimi Bin Hanapi and Mohd Khairul Rizal Bin Mohd Shukor, and the virtue of contemplation and wisdom of interpretation in search for the meanings of professional acme, judgment and integrity.

The dissertation would never have been possible without the guidance of Allah and the help of sincere persons. I owe my legal knowledge to all the lecturers of Universiti Teknologi MARA (UiTM) Shah Alam (formerly known as Institut Teknologi MARA), all of whom had given me confidence when I was very green. The same holds true of my supervisor Prof Dato' Hussin Ab Rahman, the Director of Universiti Teknologi MARA, Machang, Kelantan who first persuaded me to take up a research in this area of law relating to the never ending controversial issue affecting medical negligence : The Bolam Test.

As far as this dissertation goes couple with my handicap due to stroke which I had suffered since 25th March 2002, I never could have gotten it off the ground without the invaluable help and guidance of my wonderful learned supervisor

whose patience and legal skills helped me out immensely when I was stuck at the beginning of my research.

I would not be able to complete this dissertation without the patience of my wife, Wan Siti Nurizah binti Wan Yusoff and my children who are always with me during my bad time on my lonely journey to the final destiny of this dissertation.

Uncountable of heartiest thanks are specially dedicated to every person who had directly or indirectly assisted and guided me throughout the journey in completing this dissertation.

The usual caveat: the mistakes that remain in this dissertation are mine, and mine alone.

May Allah bless us.

Mej (B) Ku Abdul Rahman bin Ku Ismail PJK
January 2010

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