

**A COMPARATIVE STUDY OF A CHILD'S CONSENT TO MEDICAL
TREATMENT BETWEEN MALAYSIA, UNITED KINGDOM, AND
AUSTRALIA**

By

Fatin Aina bt Ramli (2010657298)

Norsyuhada bt Nordin (2010452328)

Fatin Syuryati bt Hassan (2010274256)

Submitted in Partial Fulfilment of the Requirement for Bachelor of Legal Studies
(Hons)

Universiti Teknologi Mara
Faculty of Law

December 2012

The 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

Firstly, we would like to thank Puan Habibah, our beloved lecturer who was willing to spare his time to attend to our petty line questions about the research paper. Without her clarifying answers and guidance, we would still be groping in the dark and unable to finish this research paper. We would also like to thank her for spending her time with us in completing this research paper.

Secondly, we would like to thank ourselves for pouring our hearts and souls into this assignment up to a point where we were willing to sacrifice our much needed holiday in order to create this humble masterpiece of ours. Because of our sincere and noble intentions, we managed to rack our brain and come out with this research paper.

Thirdly, we would like to thank our parents for giving us the moral support we critically needed. Without their blessings and prayers, this research paper would be as bland and uninteresting as a cup of sugarless tea.

Fourthly, we would like to thank to our previous lecturer of Legal Research & Methodology, Dr. Shila whom guided us for the previous subject which produced this research paper. We would like to thank her for being patient with us, answering our questions, giving us support and for being such darlings.

Lastly, we hope that you will be satisfied with our efforts in completing this research paper. We do hope that you will give the best feedback in assessing our works as it may assist us in our marks. We would also be pleased if you give us some moderate comments as a guide for us in the future work. Insyallah.

Abstracts

The issue of a child's consent to medical treatment are not widely discussed in Malaysia. This research aims to determine whether in Malaysia a child patient can give a valid consent in law to his or her medical treatment. The issue of whether a patient who is still a child has the right to give consent to medical treatment needs to be researched and discussed in order to give clarity and certainty to the law so that it can in turn be used as the basis for medical and legal practice.

The examination on rules, regulations, and policies are being observed in order to obtain a clearer picture on the status quo of a child's consent to medical treatment in Malaysia. Amongst the rules and regulations are the Age of Majority Act 1971, Child Act 2001, Children & Young Persons Employment Act 1966, Guardianship of Infants Act 1961, Guidelines by Malaysian Medical Council (MMC), and etc. From examining these legislations, it can be concluded that currently Malaysia does not have a specific law that governs a child giving consent to medical treatment.

Apart from discussing the current laws in Malaysia, the legal framework of a child's consent to medical treatment from the United Kingdom and Australia will also be discussed. Unlike Malaysia, the laws between the two countries mentioned before have provided rights to a child in terms of giving consent to medical treatment.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Contents	iv
List of Statutes and Legislation	vi
List of Cases	vii

CHAPTER ONE: INTRODUCTION 1

1.0 Introduction	1
1.1 Research Background	1
1.2 Research Questions	4
1.3 Objective of the Study	4
1.4 Research Methodology	4
1.5 Scope	5
1.6 Limitation	5
1.7 Significance	6
1.8 Literature Review	6
1.9 Conclusion	12

CHAPTER TWO: THE LEGAL FRAMEWORK OF A CHILD'S CONSENT TO MEDICAL TREATMENT IN MALAYSIA 13

2.0 Introduction	13
2.1 Child in the Perspective of Malaysian's Law	13
2.1.1 Definition of "child" and their ages in Malaysia	13
2.1.2 Identification <i>on</i> child in various statutes under Malaysian law	14
2.1.3 The definition of child consent in Malaysian law	17
2.2 The Legal Framework of Consent to Medical Treatment in Malaysia	20
2.2.1 Nature of Consent	20
2.2.2 Consequences of Invalid Consent	22
2.3 Current law on a child's consent to medical treatment in Malaysia	25
2.4 Advantages and Disadvantages of Current Laws	28
2.5 Conclusion	29

CHAPTER THREE: THE LEGAL FRAMEWORK OF A CHILD'S CONSENT TO MEDICAL TREATMENT IN THE UNITED KINGDOM 30

3.0	Introduction	30
3.1	Child in the Perspective of Law in the United Kingdom (UK)	30
3.1.1	Definition on a child and the age	30
3.1.2	Recognition of a child's identity in the UK legal perspective	31
3.1.3	Child consent under the UK law	32
3.2	The Legal Framework on Consent to Medical Treatment in the United Kingdom	33
3.2.1	The General Principles of Consent	34
3.2.2	Valid Consent	35
3.2.3	Consent for Incompetent Adult	37
3.3	Current law on a child's consent to medical treatment in the United Kingdom	39
3.4	Advantages and Disadvantages of Current Laws	42
3.5	Conclusion	42

CHAPTER FOUR: THE LEGAL FRAMEWORK OF A CHILD'S CONSENT TO MEDICAL TREATMENT IN AUSTRALIA 43

4.0	Introduction	43
4.1	Children in the Legal Perspective of Australian Law	43
4.1.1	Definition of child and their ages	43
4.1.2	Recognition of a Child's Identity in Australia	45
4.1.3	Child Consent in Australia	46
4.2	The Legal Framework on Consent to Medical Treatment in Australia.	47
4.2.1	Consent	49
4.2.2	Requirement of a Valid Consent	49
4.2.3	Capacity to Give Consent	51
4.2.4	Process of Consent	52
4.3	Current Law on a child's consent to medical treatment in Australia	53
4.4	Advantages and Disadvantages of Current Laws	58
4.5	Conclusion	59