

TABLE OF CONTENTS

| <u>ITEM</u> | <u>CONTENTS</u> | <u>PAGES</u> |
|-------------|---|--------------|
| 1. | TABLE OF CONTENTS | i - ii |
| 2. | PREFACE | iii |
| 3. | ABSTRACTS | iv |
| 4. | ABBREVIATIONS | v |
| 5. | TABLE OF CASES | vi - ix |
| 6. | TABLE OF STATUTES | x |
| 7. | CHAPTER I INTRODUCTION - A) The Concept of Tort - B) The Nature of Tortious Negligence - C) The Reasonable Man - D) The Modern Law of Negligence - E) Reception of English Common Law | 1 - 7 |
| 8. | CHAPTER II PERSONAL LIABILITY - 1) Duty of Care - Contract or Tort - 2) Solicitors Duty to His Client | 8 - 15 |
| 9. | CHAPTER III - A) Advocates and The Immunity of The Bar - B) The Position of A Barrister - C) Immunity of The Bar : Rondel V Worsley - D) The Position of Advocate in Malaysia | 16 - 36 |

TABLE OF CONTENTS

| <u>ITEM</u> | <u>CONTENTS</u> | <u>PAGES</u> |
|-------------|--|--------------|
| 10. | CHAPTER IV - A) Solicitors And The Liability in Tort - B) Duties to Client - C) Duties and Third Parties - D) Liability for Breach of Duty - E) Damages | 37 - 48 |
| 11. | CHAPTER V CONCLUSION | 49 |
| 12. | BIBLIOGRAPHY | |

PREFACE

Professional negligence is an area of tort which is based on judicial decisions and there is no statutory law. Therefore, it requires a detailed study on various cases to see how they developed. The scope of this project paper is to discuss professional negligence in the legal profession. In this context, the writer shall examine the liability of lawyers in performing their legal duties.

At the beginning, an attempt has been made to study the changes of law through judicial decision. This is to provide the necessary background information to the understanding of law as it exists today.

In the preparation of this paper, I have made research at the Tun Abdul Razak Library, Mara Institute of Technology, and at the High Court Library in Kuala Lumpur. Besides the research, I have received the most invaluable help from Supervisor, Mr. Yashwant Rai Vyas, and I am deeply indebted to him. Without his assistance and guidance, I doubt this paper will come into being. But for the view expressed and for the error and omission, I alone remain responsible.

Finally, a special word of appreciation to my father, Incik Shaikh Salleh, who has been of service in the completion of this paper and indeed to all who have helped me, knowingly or otherwise, my gratitude knows no bound.

ROZITA SHAIKH SALLEH

Diploma in Law
Mara Institute of Technology
Shah Alam
May, 1985

ABSTRACTS

This paper primarily deals with professional negligence in the legal profession.

The first chapter is the introduction to the paper. In that chapter, the writer discussed the development of torts of negligence and the reception of English Common Law into Malaysia. The authority for this reception is provided under Section 3 of the Civil Law Act 1956 (Revised 1972). The statute also provides for the limitation of time period for the application of this law. However, in spite of the limitation of time period, English Common Law particularly in torts is followed in Malaysia.

The second chapter deals with the legal responsibility of a professional person deriving from a combination of contractual and tortious principle.

Chapter three deals with Advocates, public policy and the immunity of the Advocates. In this chapter, the case of *Rondel V Worsley*, in which the House of Lords decided that a barrister enjoys immunity in professional negligence is discussed. This chapter also features the position of Advocates in Malaysia.

Chapter four, *inter alia* deals with the liability of Solicitors in torts. In Malaysia, where the profession is fused, a Solicitor is still liable in contract to his client for matters outside the scope of immunity as an advocate.

Finally, chapter five, rounds up with an attempt to draw line between immunity and liability.