

PROFESSIONAL NEGLIGENCE IN TORTS  
A STUDY OF ON ARCHITECTS,  
ENGINEERS, BUILDING CONTRACTORS  
AND SURVEYORS

by

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Submitted in Partial Fulfillment  
of The Requirements for the  
Diploma in Law  
at the  
MARA Institute of Technology

Mei, 1987

## PREFACE

There is no doubt that professional negligence is a matter of increasing concern to professions and public alike. The last fifteen years have seen a dramatic increase in both the number of professional negligence cases reaching court and in the premiums payable under insurance policies. Government committees and commissions have issued a series of reports on the problems of the professions, and legislation has provided for increased regulation of some professions in an effort to protect the public interest. The professions themselves have engaged in a process of self-examination often resulting in a strengthening of their codes of conduct. In all probability these developments are the result not of any deterioration of the traditionally high standards of professional conduct, but rather of an increased awareness by the public and government that professions can and should be held legally accountable for their conduct. Whether the recent rapid development of the legal principles concerning professional negligence has been a cause or effect of this new awareness, is debatable. What is clear, is that an understanding of these principles and their potential is of vital importance to professional men, their clients and advisers. The aim of this paper is to provide the basis for such an understanding.

An area of law which is based on judicial decisions certainly requires a detailed study of various cases to see how they developed. The writer's interest in the law relating to professional negligence with special reference to architectural, engineering and valuing

profession was hindered during a discussion on this profession with her fellow friends.

Basically, the law of professional negligence is based on judicial decisions and there is no statutory law in this area. My discussion will therefore be centered primarily on cases.

The writer would like to record appreciation and gratitude to the following:

Mr. Vijayan Gopal for supervising this paper, his invaluable advice and encouragement, without which the ideas and contents of this paper would not have been possible and to Mr. Jaginder Singh for all his suggestions and assistance. The writer would also like to record her heartfelt gratitude and appreciation to her parents for their encouragement and financial assistance. Last but not least a special word of appreciation goes to my husband who had been of help in the completion of this paper.

## ABSTRACT

English Common Law formed part of the laws in Malaysia. The authority for the reception of this law of England into this country is provided under Section 3 of the Civil Law Act 1959 (Revised 1972). The statute also provided for the limitation of time period for the application of this law. As regards Peninsular Malaysia the date 7th April, 1956, Sabah, 1st December 1951 and in Sarawak, 12th December 1949 is significant because only English Common Law and equity as administered on the date is applicable.

However in spite of the limitation of time period English Common Law particularly in torts is still followed in Malaysia. This can be seen from some of the decided cases mentioned in this paper.

In order to bring the law into line with the modern day trend several changes have been introduced through judicial decisions. An examination on cases of professional negligence shows that prior to 1960s, the courts have been reluctant to award damages for pure financial loss. In 1962 with the decision in Hedley Byrne's case the liability had been widened. This case has opened the way for the recognition of new-duty situations where pecuniary loss is involved.

Another particular aspect of the law which has undergone some changes is in regards application of criteria for determining the requisite standard of care of professionals as propounded in Bolam's case. It should be noted that the current application of these criteria that is where the standard of care is set by the members of the