

" THE DUTY OF CARE PRINCIPLE "
A STUDY CASE ON
DONOGHUE v. STEVENSON;
ITS EXTENSION AND APPLICATION IN
UNITED KINGDOM AND MALAYSIA

BY

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CHAPTER ONEINTRODUCTION

This paper deals with the duty of care principle with special reference to its extension and application in United Kingdom and Malaysia. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The law of torts especially on duty of care principle is based on judicial decisions and there is no statutory law in this area. Therefore the discussions is centred primarily on cases, Reception of English decisions is by virtue of Section 3 of the Civil Law Act, 1956 (revised 1972).

This paper will discussed the duty of care principle in conjunction with the "Neighbour Principle" enunciated by Lord Atkin in the case of Donoghue v. Stevenson.¹ The aim of this paper is to examine the principle and its extension thereof.

The duty of care principle consists of three elements. They are the duty of care itself, the breach of the duty and the damage procured as the direct or indirect consequence of the breach.

The duty of care principle is related to the negligence of the defendant who failed to exercise a reasonable

care. This can be due to his careless conduct or his state of mind. Recent development on the law of tort has extended the principle to wide areas. It includes negligent misstatement and professional negligence. In this particular area, the standard of the duty is higher than those imposed in the ordinary breach of the duty which requires a person to exercise a reasonable care. In this paper, the area which includes professional negligence is discussed mainly on the principle in Hedley Byrne v. Heller & Partners Ltd.²

The test or the standard of care required is that of a reasonable man, "The man on a Clapham Omnibus" as Lord Bramwell called him. However, the test is an objective one and in cases of professional negligence, the duty imposed is measured by the skill possessed by the man of that profession.

This paper will deal on the extension and application of the principle. The extension will include the physical injury, nervous shock and negligent misstatement. The test here would include the economic loss test and the reasonable foreseeability test. Finally, this paper will deal with the outcome of the breach, i.e. damages.