

LAWYER'S LIABILITY IN NEGLIGENCE
TO THIRD PARTIES

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Table of Contents

	Page
Preface	(i)
Table of Cases	(iii)
Table of Contents	(v)
Chapter I	1
Introduction	1
A. Reception of English Common Law	1
B. Definition of Negligence	4
C. Nature of Negligence	5
Chapter II	
A. Nature of Liability In Negligence	12
B. Duties To Third Parties	16
Chapter III	
Standard Of Care	21
(i) Reasonable Care	22
(ii) Specialist Solicitor	30
Chapter IV	
Conclusion	33

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CHAPTER 1

INTRODUCTION

A. RECEPTION OF ENGLISH COMMON LAW

English common law has formed part of the law in Malaysia particularly in the areas of Torts. The relevant provision for the reception of the law of England into this country is provided for under Section 3 Civil Law Act 1957 (Revised 1972) Section 3 (1) (a) states that:

Save so far as other provisions has been made or may hereafter be made by any written law in force in Malaysia, the Court shall (a) in the West Malaysia or any part thereof apply the Common Law of England and the rules of Equity as in England on the 7th day of April 1956

The date, 7th April 1956 is important because only English common law and Equity as administered on that date in England is applicable.

Under Section 3 (1) (b), the English law applicable in

Sabah is the common law of England and the rules of Equity together with statutes of general applications as

administered or in force in
England on the 1st. day of
December, 1951

While under Section 1 (1) (c)

Sarawak applies the common
law and the rules of Equity
and statutes of general
applications as administered
or in force on the 12th. day
of December, 1949

Provided always that the said common law
of England and the rules of Equity and
statutes of general applications shall
be applied so far as the circumstances
of the states of Malaysia and their res-
pective inhabitants permit and subject
to the qualifications as local circum-
stances render necessary.

Thus, the dates of 1st. December 1951 and 12th. De-
cember 1949 respectively are significant because only
English common law and rules of Equity together with
statutes of general applications as administered in
England on that date in Sabah and Sarawak respectively.

Since 1956, English decisions are no longer binding in
Malaysia although they are of persuasive effect. But
the Malaysian Courts still follow the English Court
as in the case of Lembaga Letrik Negara V Ramakrishnan.¹

The respondent, a 10 year old boy climbed up a H-pole erected and maintained by the appellant, in an attempt to release a bird trapped on the wire of the pole. The boy was electrocuted as he reached the bracket which supported the cable-box. He was thrown to the ground suffered severe injuries. In the course of the argument before the High Court and Federal Court, the main contention was that the respondent was a trespasser and the relationship of occupier/trespasser fell into consideration. The trial judge held that the appellant was liable for breach of duty to take care. The appellant appeal.

The Court held that on the evidence of the case it was one of occupier and trespasser and that the respondent was trespassing on the property of the appellant and hence the principle in the English case of British Railway Board V Herrington² was followed where the House of Lords held that an occupier owes a trespasser a duty of care.

The law of Torts in Malaysia especially on professional negligence is based on judicial decisions and there is no statutory law in this area. Therefore, the discussion of this paper is centred primarily on decided cases.