

**THE APPLICATION OF THE BOLAM PRINCIPLE WITH REGARDS TO  
DIAGNOSE AND TREATMENT: A COMPARATIVE STUDY BETWEEN  
MALAYSIA AND AUSTRALIA**

By

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The students/authors confirms that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

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## ABSTRACT

The Bolam Principle has been the principle that has been applied in both Malaysia and Australia in order to determine the standard of care of doctors and to establish whether or not duty of care has been breach. This principle has been criticized mainly because it is said to favor doctors rather the patients. The judgment in the case of *Rogers vWhitaker* (1992) 175 CLR 479 and the *Naxakis v Western General Hospital & Anor* (1999) 162 ALR 540 has been the turning point in Australian courts as it was decided that the Bolam Principle is not applicable in all aspect of medical negligence. In Malaysia however, based on the decision in the case of *Foo Fio Na v Dr Soo Fook Mun & Anor* (2007) 1 MLJ 593, the Bolam Principle is only disregarded in doctor's duty to disclose medical risks to patients. Therefore the Bolam Principle still reigns as the yardstick in determining the standard of care and to establish breach of duty by doctors in the realm of diagnosis and treatment. However, due to the criticism on the Bolam Principle, it is best that the Bolam Principle be abandon in all realms of medical negligence. This is important as to protect patients from injuries cause by negligent act of doctors and to ensure their rights are protected.

## TABLE OF CONTENT

Acknowledgement	ii
Abstract	iii
Table of Contents	iv
List of Cases	vi

### CHAPTER ONE: INTRODUCTION

1.1 – Introduction	1
1.2 – Background	1
1.3 – Problem Statement	4
1.4 – Objective of Study	4
1.5 - Research Methodology	4
1.6 – Scope of Limitation	5
1.7 – Significance of Study	5
1.8 – Plan of Research	6
1.9 – Conclusion	7

### CHAPTER TWO: LITERATURE REVIEW

2.1 – Introduction	8
2.2 – Medical Negligence	9
2.3 – The Bolam Principle	12
2.4 – Duty of Medical Practitioner in Diagnosing and Treating Patients	14
2.5 – Conclusion	17

### CHAPTER THREE: COMMON LAW APPROACH IN MALAYSIA AND AUSTRALIA WITH REGARDS TO THE BOLAM PRINCIPLE PERTAINING TO MEDICAL NEGLIGENCE

3.1 – Introduction	18
3.2 – Medical Negligence and Standard of Care	18
3.3 – The Application of the Bolam Principle in Australia	20
3.3.1 – The Reception of Common Law in Australia	22
3.3.2 – The Development of the Bolam Principle in Australia	23
3.3.3 – The Departure from the Bolam Principle in Australia	24
3.4 – The Application of the Bolam Principle in Malaysia	27
3.4.1 – The Reception of the Common Law in Malaysia	27
3.4.2 – The Development of the Bolam Principle in Malaysia	29
3.4.3 – The Departure of the Bolam Principle in Malaysia	32
3.5 – Comparison between the Application of the Bolam Principle in Malaysia and Australia	34
3.6 – Conclusion	35

## **CHAPTER FOUR: INTERVIEWS AND FINDINGS**

4.1 – Introduction	36
4.2 – First Interview	36
4.2.1 – Dr. Abdul Syukor Md. Noh (Surgeon)	
4.2.2 – Summary of the Interview	37
4.2.3 – Findings from the Interview	38
4.3 – Second Interview	
4.3.1 – Puan Noraziah Abdul Jabar (Law Lecturer)	39
4.3.2 – Summary of the Interview	39
4.3.3 – Findings from the Interview	41
4.4 – Conclusion	41

## **CHAPTER FIVE: RECOMMENDATION AND CONCLUSION**

5.1 – Introduction	42
5.2 – First Recommendation – Adopting the Stand Made by the Australian Court	42
5.3 – Second Recommendation – Adopting the ‘No-Fault System’	44
5.4 – Third Recommendation – Improve the Interpersonal Communication Skills of Doctors	46
5.5 – Forth Recommendation – Enact a New Law Pertaining to Professional Negligence which Includes Medical Negligence	47
5.6 – Conclusion	47

## **Appendices**

Appendix 1	48
Appendix 2	49
Appendix 3	52
Appendix 4	55
Appendix 5	76
Appendix 6	89

List of References	101
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