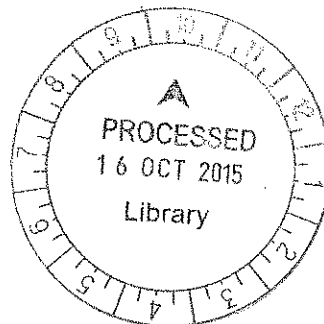


**PROFESSIONAL NEGLIGENCE BY QUANTITY
SURVEYORS**

FOR REFERENCE ONLY

BY

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2015

This report is submitted as a partial requirement for the degree
of
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DECLARATION

I, TAN CHAI SAN (I12000571) confirm that the work in this report is my own work and the appropriate credit has been given where references have been made to the work of other researchers.



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ABSTRACT

Professional negligence is a failure to perform standard duty of care by the person who is known to be skilful. Quantity surveyors involved in the construction process from the start to the end. He is said to be owed a duty of care to the parties involved in the contract and also owed a duty of care to third parties under tort. This research is to identify the conducts of quantity surveyors that will lead to professional negligence and to discover remedies for professional negligence. This research is conducted in quantitative method, which is questionnaire survey. The results are obtained from 31 respondents who are working in Consultant Quantity Surveyors Firm in Selangor Malaysia. Based on their responds, the analysis of the conducts of Quantity Surveyors is tabulated. The result shown that the top 3 conducts of Quantity Surveyors that will lead to professional negligence are: (1) Preparation of Preliminary Estimates, (2) Tender Documents, (3) Estimate for Variation Works. From the analysis, the most preferable remedy for professional negligence is Professional Indemnity Insurances (PI). The finding of the result showed that the professional negligence by quantity surveyors is much related to costing works.

Table of Contents

ACKNOWLEDGEMENT.....	I
DECLARATION	II
ABSTRACT	III
Table of Contents	IV
LIST OF TABLE	VII
LIST OF FIGURE.....	VIII
LIST OF CASES.....	IX
LIST OF ABBREVIATIONS	X
Chapter 1	1
Introduction.....	1
1.1 Background	1
1.2 Problem Statement	4
1.3 Aim and Objectives.....	5
1.4 Importance of Study.....	5
1.5 Scope and Limitation.....	6
1.6 Research Methodology.....	7
Chapter 2	8
Literature Review	8
2.1 Professional Liability	8
2.1.1 Professional Liability under Tort of Negligence.....	8
2.1.2 Professional Liability under Contract.....	10
2.2 Professional Negligence	11
2.3 Quantity Surveyors' Duty	12
2.3.1 Preparation of preliminary estimates.....	13
2.3.2 Pre-tender Estimates.....	14
2.3.3 Tender Documents	14
2.3.4 Tender Report.....	15
2.3.5 Letter of Award	16
2.3.6 Preparation of contract documents.....	16
2.3.7 Preparation of sub-contractor documents.....	17
2.3.8 Estimate for variation works.....	18
2.3.9 Interim Claim	18
2.3.10 Preparation of final account.....	19
2.4 Remedies for Professional Negligence.....	20

2.4.1 Professional Indemnity Insurances.....	20
2.4.2 Litigation.....	21
2.4.3 Alternative Dispute Resolution.....	21
Chapter 3.....	24
Research Methodology.....	24
3.1 Introduction.....	24
3.2 Research Strategy.....	25
3.2.1 Quantitative Research.....	25
3.3 Research Methodology.....	26
3.3.1 Sampling Frame.....	26
3.3.2 Sample Size.....	26
3.3.3 Sampling Method.....	27
3.4 Data Collection Method.....	27
3.4.1 Primary Data.....	27
3.5 Research Design.....	28
3.5.1 Questionnaire design.....	28
3.6 Data Analysis.....	29
3.6.1 Descriptive Data Analysis.....	30
3.6.2 Frequency Analysis.....	30
3.6.3 Weighted Average Index.....	30
3.6.4 Rank Correlation Coefficient.....	30
3.6.5 T-test for two independent samples.....	31
Chapter 4.....	32
Data Collection and Analysis.....	32
4.1 Introduction.....	32
4.2 Respond Rate.....	32
4.3 Respondent's Demographic.....	32
4.3.1 Years of Experience in Construction Industry.....	33
4.3.2 Positions in Working Place.....	34
4.3.3 Highest Academic Qualification.....	35
4.3.4 Membership in QS Professional Institution.....	36
4.2.5 Type of Projects.....	38
4.4 Professional Negligence by Quantity Surveyors.....	39
4.5 Remedies for Professional Negligence.....	50
4.5.1 Remedies for Professional Negligence.....	50

4.5.2 Professional Indemnity Insurances.....	53
4.5.3 Professional Negligence Claim	54
4.6 Other Comments.....	55
4.6.1 Disputes caused by Professional Negligence	55
4.6.2 Need of Professional Indemnity Insurances (PI) by Quantity Surveyors.....	56
4.7 Conclusion.....	57
Chapter 5	58
CONCLUSION AND RECOMMENDATIONS	58
5.1 Introduction	58
5.2 Conclusions	58
5.3 Limitations	60
5.4 Recommendation for further study.....	60
Chapter 6	62
REFERENCES.....	62
APPENDIX	67
Appendix A: Sample Form of Questionnaire.....	68
Appendix B: Questionnaire Responds.....	69
Appendix C: Key Journal	70
Appendix D: Turnitin	71

LIST OF TABLE

Table 4.1 Membership in QS Professional Institution	37
Table 4.2 Professional Negligence by Quantity Surveyors	39
Table 4.3 Sample 1: Working Experience 0-10 years	42
Table 4.4 Sample 2: Working Experience more than 10 years	43
Table 4.5 During Pre-Contract Stage	46
Table 4.6 During Post Contract Stage	48
Table 4.7 Remedies for Professional Negligence.....	50
Table 4.8 Professional Indemnity Insurances.....	53
Table 4.9 Professional Negligence Claim	54
Table 4.10 Will Professional Negligence cause Disputes?	55
Table 4.11 Need of PI by Quantity Surveyors	56

LIST OF FIGURE

Figure 3.1 Sample Size Calculation	26
Figure 4.2 Years of Experience in Construction Industry	33
Figure 4.3 Positions in Working Place	34
Figure 4.4 Highest Academic Qualification	35
Figure 4.5 Membership in QS Professional Institution	36
Figure 4.6 Type of Projects	38
Figure 4.7 Professional Negligence by Quantity Surveyors	40
Figure 4.8 Rank Correlation for Sample 1 and Sample 2.....	44
Figure 4.9 T-test for Sample 1 and Sample 2.....	45
Figure 4.10 Remedies for Professional Negligence	51
Figure 4.11 Professional Indemnity Insurance	53
Figure 4.12 Professional Negligence Claim	54
Figure 4.13 Will Professional Negligence cause Disputes?	55
Figure 4.14 PI by Quantity Surveyors	56

LIST OF CASES

1. *Blyth v Birmingham Waterworks Co (1856) 11 Exch 781*-----11
2. *Donoghue v Stevenson [1932] AC 562*-----1,12
3. *London School Board v Northcroft Son & Neighbour (1889)*-----4
4. *STEVEN PHOA CHENG LOON & ORS V. HIGHLAND PROPERTIES SDN BHD &
ORS*-----9,13
5. *Sweett (UK) (formerly Cyril Sweett) v Michael Wight Homes*[2012] EW Misc 3 (CC)---7
6. *Tyrer -v- District Auditor of Monmouthshire*-----4
7. *Winnipeg Condominium Corporation No. 36 v. Bird Construction Co.*-----2

LIST OF ABBREVIATIONS

BQSM	Board of Quantity Surveyors Malaysia
CIDB	Construction Industry Development Board
RISM	Royal Institute of Surveyors Malaysia
RICS	Royal Institute of Chartered Surveyors

Chapter 1

Introduction

1.1 Background

Oxford Dictionary stated that professional is someone who 'engaged or qualified in a profession'. It also referred to a person who is competent, skillful or assured in his professional expertise. In Cambridge Dictionaries, negligence is defined as 'the fact of not giving enough care or attention to someone or something'. Professional Negligence can be described as failure to take standard of care, by the person who is skillful.

"Negligence" is one of the elements under tort liability. (Jeremy T. Lovell, 2007). There is always general framework of negligence principles accommodated along with the activities emerged. The major function of negligence law is to compensate the victims who are suffered from someone else's faulty conduct.

"Negligence" is first established in *Donoghue v Stevenson [1932] AC 562*, which also known as the 'snail in the bottle case. (Lawgovpol, 2014). Principle negligence and duty of care are established from the *Donoghue v Stevenson [1932] AC 562*. Negligence is affirmed as tort by the House of Lord ruling. Plaintiff can take action against the respondent for his injury or loss of property. In the other hand, this case also shown that the manufacturer own duty of care to the user of the products or services. (Lawgovpol, 2014).

However, the liability of negligence to pure economic losses has been barred where there was no direct relationship between the parties involved. (Jeremy T. Lovell, 2007). In *Winnipeg Condominium Corporation No. 36 v. Bird Construction Co.* the Supreme Court of Canada that contractors and design professionals could be liable to subsequent purchasers only when it can proof that it was foreseeable that a failure to take reasonable care in constructing the building would create defects that cause danger to safety and health of the occupants. (Jeremy T. Lovell, 2007).

“Professional” is an acquisitive concept, acquisitive of aspirations and expectations - but also of liabilities. (John L. Powell Q.C., 2000). With the increasing demand of the professional services, there is exists of professional negligence. (John L. Powell Q.C., 2000).

Construction professionals as like other professionals, maybe liable for the damage caused to their clients or third parties. Any damages caused by the construction professional, can also be known as professional negligence. (Finola O’Farrell Q.C., 2009) Liability in tort became relatively important to those who are not in normal contractual routes or where the limitation period in contract has come to the end. (Finola O’Farrell Q.C., 2009)

Not every careless act or negligence of professional give rises to negligence claim. In order to establish a negligence claim, there are certain criteria have to be fulfilled, such as (Finola O’Farrell Q.C, 2009):

- a) Exists of standard duty of care
- b) Acts fall below standard of care imposed (breach of duty of care)
- c) Legal relationship between the plaintiff’s damage and defendant’s conduct
- d) Damages fall within scope of duty.

Quantity surveyor is a professional working within the construction industry concerned with building costs. (BQSM, 2012) Quantity Surveyors specialized in the cost and financing of building and engineering contracts, from the initial estimate to the final account for the projects. (RISM, 2013) They are working on cost planning and design, fitting cost target, contract administration, and cost control. (RISM, 2013)

The history of a quantity surveyor can be reviewed back to 1820s with one of the earliest Quantity Surveyor, Sir Henry Arthur Hunt who involved in the work of Houses of Parliament. (BQSM, 2012).

According to the RICS, a traditional chartered quantity surveyor advises clients on a range of areas including, design economic and cost planning; whole life costing; health and safety/ CDM coordinator; procurement and tendering; contract administration and commercial management.

In order to be recognized as a professional quantity surveyor/ chartered quantity surveyor, a quantity surveyor has to register with Board of Quantity Surveyors. Only qualified person who register with the Board are allowed to provide Quantity Surveying services. Only registered Quantity Surveyors and firms or bodies corporate who practice consulting services shall be entitled to prepare feasibility study reports, preliminary estimates, cost plans, documents and reports for pre-qualification of contractors, bill of quantities and other tender documents, tender estimates and reports, contract documents, and valuation of works for interim payments, variation and final account. (Section 8(1a) Quantity Surveyors Act, 1967)

On the other hand, professional services such as project cost management, value management, risk management, facilities management, project management, construction

management, construction claim management, dispute resolution services, technical and construction cost auditing and condition survey are only allowed to be provided by those parties who has registered with the Board. (Section 8(1b) Quantity Surveyors Act, 1967).

1.2 Problem Statement

Quantity surveyors as with other professionals, such as architect and engineer, may be liable to their clients and third parties for damages and losses caused by professional negligence. A construction professional will be fall into professional negligence if he or she fails to exercise certain standard of care that is required. The conducts of quantity surveyors are very important in determining professional negligence.

In *London School Board v Northcroft Son & Neighbour (1889)*, the quantity surveyor has been sued for negligence because of the clerical error in calculation. The clerical calculation has brought a result to over-payment to contractor. The decision of court has held that the quantity surveyor had employed a skilled clerk who has done a large number of calculations correctly, so the quantity surveyor was not liable in this situation.

In the case of *Tyrer -v- District Auditor of Monmouthshire*, Tyrer who is a quantity surveyor under employment of local authority accepted a rate for works which he knew is ridiculously higher. Besides, he also made an arithmetical error when issued interim certificate. This cause the authority over-paid to the contractor. The quantity surveyor is found to be liable in this case as he owed a duty to carry out his professional works with a reasonable degree of care and skill. (Building Value from Knowledge, 2010)