PROFESSIONAL NEGLIGENCE BY QUANTITY SURVEYORS

FOR REFERENCE ONLY

BY

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This report is submitted as a partial requirement for the degree of Bachelor of Science (Hons) in Quantity Surveying Faculty of Science, Technology, Engineering and Mathematics

INTI INTERNATIONAL UNIVERSITY

(APRIL, 2015)
ACKNOWLEDGEMENT

First and foremost, I would like to express my gratitude and regards to Faculty of Science, Technology, Engineering and Mathematics (FOSTEM) of INTI International University which has provided a lot of support and sufficient resources for me to complete this research. Besides, research methodology classes also being organised to assist us in completing our research.

Besides, I would like to thank to my supervisor, Sr. Zetty for her assistance and guidance throughout the whole internship period. I am really appreciated for her willingness to use her free time to guide me throughout the development of the research. I am really appreciated for her invaluable advice and enormous patience throughout the whole project.

In addition, my special thanks go to my questionnaire’s respondents. I would like to take this chance to appreciate their supports on filling up my questionnaire. They were willing to use their free time to fill up the questionnaire. Without the responds received, I would not be complete the analysis and this research.

Next, I am really appreciated all the advices that have been given by my two examiners, Dr. Sam and Mdm. Izzati. A lot of useful advices and suggestions have been given by them during my proposal presentation. With their comments and suggestions, I’m able to complete my research.

Last but not least, I would like to thank for all the supports and guidance that had been given by my friends, classmates and family. Without it, I wouldn’t complete my research successfully.
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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Date: 29th April 2015
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.
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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)