

ARCHITECT'S DESIGN LIABILITY

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To my beloved Hj. Ahmad and Hjh. Norliza,  
Azrin, Aizul, Aizam and Aidi

Thank you for your support, guidance and everything.

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## ABSTRACT

To build a building can be very complex and complicated task. Right from the inception until after the practical completion many things could go wrong. Architect could be held liable for any failure in design regarding to his duty and services provided to the client. The objective of this research is to determine into circumstances in which architects might be liable towards the design during design stage and to look into consequences of architect's design liability regarding to his services and duties. The research has determined twelve circumstances of architect's duty and services which contributed to architect's design liability. His duty and services in design must include everything that covers in contractual agreement. An architect must perform his basic duty and services under Architects (Scale of Minimum Fees) Rules 1986. In performing his duty to the client, architect is subject to Rule 28 Code of Professional Conduct and Rule 29 Conditions of Engagement under Architects Rules 1996 Part IV Code of Professional Conduct and Conditions of Engagement. The research found that architect's failure to perform his duties and services expected by the client will extent the architect's liability to any negligence in design. As a result, architects will be liable for breach of duty to his client. The research found that most of the court will judge the architect's on whether or not he perform his duty of care to his client and the standard of skill and care expected to be performed by the architect. Failure by the architect to meet the standard of skill and care expected which then caused error on building design will render the architect to be liable for pure economic loss, and nuisance in tort. Thus, this research is perhaps would contribute towards enhancement of the architect's knowledge regarding their design liability under construction law.

## ABSTRAK

Proses merekabentuk dalam pembinaan bangunan adalah satu tugas yang sukar dan mencabar. Pelbagai masalah akan timbul bermula di peringkat awal reka bentuk sehingga ke peringkat akhir bangunan disiapkan. Malah, arkitek dipertanggungjawabkan ke atas kegagalan dalam melaksanakan tugas kepada pelanggannya yang menyebabkan masalah pada reka bentuk bangunan. Objektif kajian adalah untuk memastikan keadaan dimana arkitek dipertanggungjawabkan dalam reka bentuk bangunan dan kesan yang akan timbul berkaitan tugas oleh arkitek. Analisis menunjukkan bahawa arkitek perlu menjalankan tugas seperti ditetapkan di dalam kontrak. Secara asasnya, tugas-tugas dan tanggungjawab merekabentuk oleh arkitek dinyatakan di dalam *Architects (Scale of Minimum Fees) Rules 1986*. Arkitek perlu melaksanakan tugas kepada pelanggannya seperti yang termaktub pada *Rule 28 Code of Professional Conduct* dan *Rule 29 Conditions of Engagement under Architects Rules 1996 Part IV Code of Professional Conduct and Conditions of Engagement*. Kajian menunjukkan kegagalan arkitek dalam melaksanakan tugas kepada pelanggannya menyebabkan arkitek dipertanggungjawabkan kepada pembatalan tugas. Dalam kes yang melibatkan kecuaiian arkitek, hakim akan menilai sama ada arkitek melaksanakan tugas penjagaan (*duty of care*) kepada pelanggannya serta sama ada arkitek melaksanakan tugasnya sepertimana mengikut kemahiran dan penjagaan semasa (*standard of skill and care*). Kegagalan melaksanakan tugasnya sehingga menyebabkan berlaku masalah kecuaiian rekabentuk menyebabkan arkitek bertanggungjawab kepada kerugian (*pure economic loss*) dan gangguan (*nuisance*). Kajian ini diharapkan dapat membantu meningkatkan kefahaman arkitek berkaitan tanggungjawabnya dalam merekabentuk dibawah undang-undang pembinaan.

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## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of Research

An architect is defined in the New English Dictionary as ‘a skilled professor of the art of building, whose business is to prepare the plans of edifices and exercise a general superintendence over the course of their erection’.<sup>1</sup> In the other view, David Chappell and Andrew Willis (2000) have defined architect as a designers of the building project who have the difficult task of translating their client’s ideas into an acceptable design and then into working drawings.<sup>2</sup> The profession of architect is subject to the Architects Act 1997 as a registered profession, and in United Kingdom it is maintained by Architects Registration Board (ARB). Since the word ‘architect’ is derived from the Greek root arch meaning ‘chief’ and the word teckton meaning ‘carpenter or builder’, the architect should be the master-builder as the leader of the building industry team. Architects is the one who qualified to design, administer the erection of buildings and possesses both theoretical and practical knowledge. Although their work is a science as

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<sup>1</sup> William H. Gill (1964), The Law Relating to The Architect Second Edition, Stevens & Sons Limited

<sup>2</sup> David Chappell and Andrew Willis (2000), The Architects in Practice 8<sup>th</sup> Edition, Blackwell Science Ltd

well as an art, they must also produce structure, create form and combined aesthetic effect with practical considerations.<sup>3</sup>

In our local perspective view, Malaysian Institute of Architect or famously known as Persatuan Arkitek Malaysia (PAM) defined architect as a qualified professional who assist the client's in translating their building requirements into practical reality. Generally, after five to seven years of university level education and practical training, an Architectural Graduate seeks registration with the Board of Architects (Lembaga Arkitek Malaysia). Upon completion of the required practical experience and upon passing the LAM -PAM 3 Examination, a graduate Architect joins PAM as a Corporate member and then seeks registration as an Architect with LAM. A registered Architect is employed to seek planning and building approvals from the relevant authorities before a building project can be implemented. It can be said that in normal circumstances, Architects will be practice in partnerships or on their own.<sup>4</sup>

While Board of Architect Malaysia (LAM) has defined the meaning of Professional Architect as a person registered under sub section 10(2).<sup>5</sup> In Sub section 10(2), subject to this Act, the following persons shall be entitled on application to be registered under Section A of the Register as Professional Architects:

(a) any person who-

- ( i ) is a Graduate Architect
- ( ii ) has obtained the practical experience as prescribed by the Board and passed the examinations as may be determined by the Board under paragraph (1)(b) and
- ( iii ) is a corporate Member of the Pertubuhan Arkitek Malaysia or has obtained a qualification which the Board considers to be equivalent thereto.

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<sup>3</sup> David Chappell and Andrew Willis (2000), The Architects in Practice 8<sup>th</sup> Edition, Blackwell Science Ltd

<sup>4</sup> Malaysia Institute of Architects, Who is an Architect, [http://www.pam.org.my/architectural\\_services.asp](http://www.pam.org.my/architectural_services.asp)

<sup>5</sup> Architect Act 1967 (177) ( Incorporating amendments up to April 2007 ), Lembaga Arkitek Malaysia, pg. 16

As a qualified expert in building and environmental design, the architect maintains a close relationship with the building industry. In his job, he coordinates the necessary engineering and environmental service to his design so as to achieve client's objectives. With his knowledge about site analysis, building designs and complex regulations, he can clarify client's requirements in respect of a project, study possible solutions and make a design proposal. Since the architect is familiar with building construction in terms of what materials to use, what problems to look for on site and which contractors to go to, he can prepare probable costs and the construction programme in respect of any proposal he puts forward to the clients. In this respect, he is acting as adviser. The architect acts as client's agent when he submits drawings to the local authorities on client's behalf for planning and building approvals. He continues as client's agent when calling for and awarding tenders, contract administration and in helping to obtain Certificate of Fitness for Occupation. In administering the Building Contract on client's behalf, he will still act as their agent but will do so impartially and with fairness to client and the Contractor. He will still continue to advise the clients on their rights and responsibilities with respect to the Contractor.<sup>6</sup>

In practice, most architects are prepared to carry out considerable reworking of their schemes until the client is entirely happy. The relationship between architect and client is as agent and principal. The agent exercises contractual powers on behalf of the principal and in doing so the principal is bound by the agent's properly authorized acts.<sup>7</sup> All architects will be prepared to offer the 'normal' services to their clients, but some of the additional services may call for a degree of expertise in fields which not every architect will be prepared to offer.

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<sup>6</sup> Malaysia Institute of Architects, Why use an Architect,  
[http://www.pam.org.my/architectural\\_services.asp](http://www.pam.org.my/architectural_services.asp)

<sup>7</sup> David Chappell and Andrew Willis (2000), The Architects in Practice 8<sup>th</sup> Edition, Blackwell Science Ltd

Generally, the development of a construction project involves many interrelated activities. The RIBA Plan of Work divided the work into various specific and detail stages which includes <sup>8</sup>:-

i. Appraisal

During at this stage, an important function of architect is to obtain the client's brief regarding the finance available, time schedule and the function required of the building. Architect will check thoroughly that the project is feasible.

ii. Strategic briefing

At this stage, strategic brief will be prepared possibly by the client but normally by the architect regarding to all the preparatory work and the client's decisions.

iii. Outline Proposals

This stage is better known as 'sketch design'. At this stage, architect will develop the brief and commence to prepare drawings. Client should be asked to approve approximate estimate of cost carried out by quantity surveyor.

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<sup>8</sup> David Chappell and Andrew Willis (2000), The Architects in Practice 8th Edition, Blackwell Science Ltd

iv. Detailed Proposals

At this stage, the architect must take into account any client's comments about the outline proposals, complete full briefing documents and work with any appointed consultants to produce more detailed design for client's approval. Architect also should apply for planning permission and at the end of this stage, the architect should advise the client that any changes of mind will be costly in terms of time and money.

v. Final Proposals

At this stage, as soon as the architect obtains the client's approval to the scheme design, every part of the scheme must be developed in great detail. The preparation of working drawings is needed and will be highly technical, dimensioned, noted and coded.

vi. Production Information

During this stage, the architect and consultants should be busy producing all information which will be required for tendering and additional information for requirement of contractor to erect the building.

vii. Tender Documentation

Bill of quantities should be prepared by the quantity surveyor and architect must be ready to supply additional information which quantity surveyor require. Architect

and quantity surveyor also have to prepare a final cost estimate for the tender process while the planning supervisor will be producing the pre-tender health and safety plan.

viii. Tender Action

At this stage, architect should have advised the client on the most appropriate way of obtaining a price for the work. Everything need to be done before prices are obtained should be organized. In some cases, a formal pre-qualification process will be carried out in order to produce a shortlist of the most appropriate contractors. The architects and quantity surveyor will assess all tenders received and advise the client's accordingly.

ix. Mobilisation

During this stage, the architect should give advice to the client with reard to contractual matters and insurances. Discussions will have to be done concerning the appropriate form of contract which includes any necessary amendments before tender stage and the contract documents prepared for signature.

x. Construction to Practical Completion

At this stage, the architect will carry out his or his duties under the contract and make regular visits to site to inspect progress, quality of workmanship and materials.it is also necessary to supply further production information as set out in information release schedule.

xi. After Practical Completion

When work is completed, the architect must ensure that all defects are made good and financial aspects are settled accurately. The client should be supplied with some general notes on maintenance with a set of drawings showing the building, drainage system, and services installations which required for health and safety life.

While Malaysian Institute of Architect (PAM) also set out the normal construction process which should ensure a high efficiency of design and building with maximum competition for the construction work.<sup>9</sup> It includes construction process in various stage such as:-

i. Inception and Feasibility

At this stage the client will have decided to build, and having worked out initial Design Brief, make sure that the finance is available and appoint an architect. In a commercial organisation, the client will need to make sure that only one person has the responsibility for liaison with the Architect. The Architect could also help to develop client's Design Brief that he or she will use as the basis for initial design investigation. If the project is feasible, a detailed survey of the site or existing buildings may be required before design work proceeds further. Depending on the scale and nature of the project, the Architect may suggest that the client also appoint structural, services engineers, and a quantity surveyor whose fees are supplemental.

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<sup>9</sup> Malaysia Institute of Architects, How to choose an Architect, [http://www.pam.org.my/architectural\\_services.asp](http://www.pam.org.my/architectural_services.asp)

ii. Outline Proposals and Sketch Design of Schematics

The clients will now begin to see how your building will look like. From a sketch design prepared for client's approval, the design will be developed so that approximate estimates of costs can be worked out and planning permission applied for. Planning permission is sometimes known as Development Order in certain local authorities.

iii. Design Development and Production Information

The design, no longer to be changed without causing delays, is now developed in great detail. Specifications (a document that meticulously describes the standards to which the building must be built and the materials to be used) and working drawings for the builder are prepared incorporating details of structure, lighting, air conditioning and other mechanical services. At this stage, Building Plans approvals will be sought with other miscellaneous approvals from the authorities.

iv. Tender Documentation and Tender Action

A shortlist of suitable builders will be drawn up with client's approval. Detailed measurements of all elements in the proposed building are prepared by the quantity surveyor if one is appointed. The builders will be invited to cost these to enable them to submit a tender. The tender will be evaluated and recommendations will be made to client for decision to award. A contract between client and the builder can be signed. From here on, the Architect will not only be looking after client's interest but also making sure that the contract is fairly administered.

v. Project Planning, Operations on Site Completion

While the builder works out his programme and gets ready to start, client will need to ensure that the site is ready for possession. The architect will advise the client on insurances, signing the contract and other day to day matters. At stages, the architect will certify stage payments for the builder based on the work completed on site. The client as the architect's employer, are then required to honour these payments to the builder. On completion of building works, the Architect will make sure that the client understand how the building works with assistance of as built drawings and equipment operating manuals. Any defects are put right after an agreed period and then the final accounts settled.

Under Architects (Scale Of Minimum Fees) Rules 1986, the basic services to be provided by the Architect during Schematic Design Phase are :-

- i. taking the client's instructions and analysing the project brief;
- ii. preparing preliminary conceptual sketch proposals to interpret the project brief;
- iii. developing the preliminary conceptual sketch proposals into sketch designs to a stage sufficient to enable an application to be made for planning approval or approval in principle to comply with the relevant by-laws;
- iv. preparing preliminary estimates of the probable construction cost based on current area, volume or other unit costs; and
- v. where applicable, preparing and submitting the drawings and other necessary documents to relevant approving authorities for either town planning approval or approval in principle.

While during Design Development Phase, Architects must provide :-

- i. upon the approval of the proposals by either the relevant authority or the client, developing the schematic design drawings to a stage to enable other consultants to commence their detailed design work;
- ii. preparing working drawings and submitting the same together with all necessary particulars to the relevant approving authorities to obtain statutory building approval;
- iii. updating the preliminary estimates of construction costs and submitting the same to the client for his approval; and
- iv. updating the project planning and implementation schedule and submitting the same to the client for his approval.

## 1.2 Problem Statement

Generally, as mentioned by Nigel M. Robinson (1996) in his book '*Construction Law of Singapore and Malaysia*', architect's liable to various design duties and delegations of design works. But as we already know, to build a building can be very complex and complicated task. Right from the inception until after the practical completion many things could go wrong. In traditional system, at Designing and Costing Stage, architects are engaged by the client/employer to implement the project brief's discussed during the Inception Stage into detailed design, Engineer prepare for the structural analysis and Contractor carry out construction until it is completed. There is a situation where the Contractor has completed the job, suddenly there might be problems with the building because of a design failure/defects due to several error. More problems might also arise if new construction method is chosen by the client/employer to be

implement by the Architect in design. The project may suffer significant cost and time overrun, the quality is much to be desired and worst still, the project may fail or collapse causing enormous financial loss, injury to person and property and may sometimes causing the loss of human life.

In such case the client/employer may find himself in financial trouble and may find himself as a defendant to an action by tenants, buyers or public at large seeking compensation for loss of income, injury or loss of life. In the other hand, Architects might be the one who responsible as it involved with the inadequate or failure in design. Since the architect's legal obligations and responsibilities are owed to a variety of parties, and are governed by statutes, administrative regulations, and common law, Architects might be concerned to breach of contract or professional negligence.

As stated by David Chappell and Andrew Willis (2000), there is some confusion regarding the services provided by the architect.<sup>10</sup> On the one hand, it is believed that the architect's fee for a commission will include anything and everything the client may require related to the project. On the other hand, it is believed that the architect will prepare a set of plans, but anything else may need will cost extra. It is often difficult to explain the architect's services satisfactorily.

These arise to the questions on "in what circumstances that architect's liability for design during design stage will be responsible for? If there is a new construction method or design introduced, in what consequences should the architects liable for?" This is the main issue that need to be discuss in detail in this research.

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<sup>10</sup> David Chappell and Andrew Willis (2000), *The Architects in Practice* 8<sup>th</sup> Edition, Blackwell Science Ltd

### 1.3 Objective of Research

To determine the circumstances in which architects might be liable for the design during the design stage and to look into consequences of the extent of architect's design liability regarding to his services and duties.

### 1.4 Scope and Limitation of Research

The main element in this research is regarding to the architect's design liability during the design stage. This research will be limited to the traditional system of building contract. Liability and responsibility under the contract will be discussed in detail. The scope of this research will be limited to the following areas:

- i. The research scope will only focusing on Code of Professional Conduct of a professional architect in Rule 28 Part IV under Architects Rules 1996
- ii. The research scope will only focusing on Standard Conditions of Engagement of a professional architect in Rule 29 of Part IV under Architects Rules 1996
- iii. The research scope will focusing on the duties and services of professional architect in design in Rule 4, 5 and 6 Part II Architects (Scale of Minimum Fees) Rules 1986.
- iv. The research scope will focusing on the architect's duty and consequences of liability in design to professional architect

## 1.5 The Significant of Research

This research is very important in order to review on the architect's liability in design. This research also gives some information to the architect's as professional regarding to their liabilities to design that have to be taken in the perspective of law. Thus, this research is perhaps would contribute towards enhancement of the architect's knowledge regarding their liability in design under construction law.

## 1.6 Research Method

In order to achieve the research objectives, a systematic process of conducting this research had been organised. The detail methodology is divided into several essential steps as described below.

Firstly, initial literature review was done in order to obtain the overview of the concept of architect's liability in design. Discussions with supervisor, lecturers, as well as course mates, were held so that more ideas and knowledge relating to the topic could be collected. The issues and problem statement of this research will be collected through books, journal, cases, articles and magazines. The objective of this research will be formed after the issue and problems had been identified.

The second stage is the data collection stage. After the research issue and objectives have been identified, various documentation and literature review regarding to the architect's liability in design will be collected to achieve the research objectives. Generally, primary data is collected from Malayan Law Journals and other law journals via UTM library electronic database, namely Lexis-Nexis Legal Database. The secondary sources include books, articles, seminar papers, newspaper as well as information from electronic media database such as internet website that related to the study on the construction contract law. These sources are important to complete the literature review chapter

The third stage is analyzing the data collection. The author will analyze all the collected cases, information, data, ideas, opinions and comments. This is started with the case studies on the related legal court cases. The analysis will be conducted by reviewing and clarifying all the facts and issues of the case. It includes the circumstances that architect might be liable in performing their design duties and the review on judge's decision at the point of law regarding to this issue.

The final stage of the research process mainly involved the writing up and presenting the research findings. The author will review the whole process of the research with the intention to identify whether the research objectives have been achieved. Conclusion and recommendations will be made based on the findings during the stage of analysis.

## 1.7 Research Structure

This research consists of five (5) chapters. The brief descriptions of each chapter are as follows:

### Chapter 1 : Introduction

This chapter presents the overall content on the research. It introduces the background of the research, problem statement, objective, scope of research and research method to achieve the objective.

### Chapter 2: Duties, Responsibility and Liability of Professional Architect

This chapter concentrates on the duties, responsibility and liability of Professional Architect to the client. The relationship as an agent to the client is explained in detail. Duty and responsibilities as contract administrator also has been discussed in this chapter. Elements and item that need to be included in the Agreement of Professional Architectural Services also discussed in detail

### Chapter 3: Liability For Design

This chapter discussed about liability for design. This is to ensure that issue of the research is achieved

#### Chapter 4: Analysis on Research

This chapter analyzed about the results from the judicial decisions as reported in law reports which is related to the research issue on “Architect’s Liability in Design”. All cases are discussed and analyzed in detail. Besides that, analysis about the provision in the Architect Act 1967 (Act 117), Architect Rules 1996 and Architects (Scale of Minimum Fees) Rules 1986 regarding the issue of design is also discussed in detail.

#### Chapter 5: Conclusion and Recommendation

Conclusion on the research based on all the discussion in the previous chapter will be presents in this chapter. Recommendation will be given to give information and useful knowledge for the architects in performing their duties and services regarding his liability for design work in construction law perspective.

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