

ARCHITECT LIABILITY DURING INSPECTION OF WORK

ANWAR BIN MOHD APANDI

UNIVERSITI TEKNOLOGI MALAYSIA

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ANWAR BIN MOHD APANDI

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To My Father and Mother

Thank you for your support, love and encouragement.

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ABSTRACT

Architect is one of the professionals that involved in all the stages in the construction development. The duties of architect in the construction stage such as inspection for make sure all the works are follow on specifications and plan and advise a client for works on credible contractor to carry the construction project. The architect will require delivering his duties with reasonable skill and care. In a case law, they are many problems related with inspection of work by architect towards a client. The breach to a client under on reasonable skill and care is a failure and negligence inspection. But, in other cases they not become breach and negligence duty to inspect a work if architect can proof. This research seeks to determine liability of The Architect associate inspection during construction stage. The scope is liability to a client and under traditional procurement. The analysis was carried out by referring to relevant law cases. This study found that generally, the architect owe a duty of care to perform his duty with diligent and with reasonable skill in accordance to the standard of duties stated to a client. If he fails to make inspection he is liable for resulting damages to his client. The architect cannot be claim by a client if he inspect a work with certain degree.

ABSTRAK

Arkitek adalah kumpulan professional yang terlibat di dalam semua peringkat pembangunan pembinaan. Dalam peringkat pembinaan, antara tugas arkitek adalah memeriksa bangunan untuk memastikan semua kerja di dalam pembinaan mengikuti spesifikasi dan pelan. Ia juga bertanggungjawab dalam menasihati klien untuk memastikan kredibiliti kontraktor untuk menjalankan kerja tersebut. Arkitek hendaklah menjalankan tugas dengan penuh perhatian dan tanggungjawab. Di dalam kes mahkamah, banyak masalah yang melibatkan arkitek dengan klien. Pelanggaran kontrak dibawah arkitek adalah kegagalan untuk memeriksa bangunan dengan penjagaan dan tanggungjawab. Tetapi, dalam kes lain pelanggaran kontrak tidak terjadi jika hanya kesilapan di dalam memeriksa bangunan yang dapat dibuktikan oleh arkitek bahawa dia telah menjalankan tugas sewajarnya. Kajian ini untuk mengenalpasti liabiliti arkitek termasuk dalam memeriksa bangunan di dalam peringkat pembinaan. Skop kajian ini adalah terhadap klien dan dibawah dokumentasi secara traditional. Analisis dibuat dengan merujuk kepada undang-undang kes yang berkaitan. Kajian ini telah menjumpai arkitek mempunyai tanggungjawab untuk menjalankan tugas kepada klien. Jika ia gagal dalam membuat pemeriksaan terhadap bangunan, ia boleh dikenakan ganti rugi kepada klien. Arkitek tidak perlu membayar ganti rugi dan tidak termasuk dalam pelanggaran kontrak jika kerja yang dibuat adalah disebabkan kecacatan dengan beberapa sebab dan membuktikan tiada kesilapan.

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LIST OF ABBREVIATIONS

PAM	-	Pertubuhan Arkitek Malaysia
PWD	-	Public Works Department Malaysia
P.D	-	Project Director
S.O.	-	Superintending Officer
C.O.W	-	Clerk of Work

CHAPTER 1

INTRODUCTION

1.1 Background Of The Study

The architect is a important profession team in a construction project. Architect is qualified to design and administer the erection of buildings, and must possess both theoretical and practical knowledge.¹ The Architects (registration) Act 1931, as amended by the Architects Registration Act 1938, made it illegal for any person to practice or carry on business under any name, style or title containing the word “architect” unless he was a person registered under Principal Act. The appeal tribunal defined “architect”²

An Architect is one who possesses, with due regard to aesthetic as well as practical considerations, adequate skill and knowledge to enable him (sic) (i) to originate, (ii) to design and plan, (iii) to arrange for and supervise the erection of such building or other works calling for skill and design in planning

¹ David Chappel & Andrew Willis (2006) The Architect in Practise : Blackwell at pg 7

² R v. Architects Registration Tribunal, ex p. Jaggar [1945] 2 All E.R. 131

as he might, in the course of his business, reasonably be asked to carry out in or in respect of which he offers his services as a specialist.

The Architect should have a good, practical knowledge of building and allied trades and must have at least a working knowledge of the more specialized aspects of building, such as mechanical and electrical engineering services. Above all they must be creative and dedicated to solving the client's problems as expressed in the brief.³

According to *Shrike*⁴, the term professional refers to a person who is skilled and specialized, holds some special qualifications derived from training or experience and conforms to high standard of performance and work ethics. This professional belongs to a regulatory body which prescribes common rules of conduct and standard practice. This professional must perform his duty under a standard of performance.

One of the duties of the architect during construction stage is to inspect and supervise the work of the contractor. Inspection should have a definite purpose. They should coincide with particular stages in the works. The architect must prepared early and highlight the important matters before inspect.⁵

The duties of architect to a client in a construction stages such as he must inspect and supervise a work by contractor. They can be determining the architect is liable to a client or not in a level of inspection. They are two situations in liability of inspection, whether is a poor or negligence by architect

³ David Chappel & Andrew Willis (2006) *The Architect in Practise* : Blackwell at pg 8

⁴ Shrike,S (2009) 2 MLJ cl xii 2 MLJA 162 : Professional Negligence in the Construction Industry, MLJ Articles

⁵ David Chappel & Andrew Willis (2006) *The Architect in Practise* : Blackwell at pg 233

to inspect and failure by architect to do a duty for a client that become breach of contract.

Therefore an architect may become liable in either contract for any physical injury or economic loss which any person has suffered due to his failure possess and to exercise reasonable skill and care in the performance of his professional work. Failure to exercise in the normal skill and care which circumstances demand is negligence.⁶

1.2 Statement Of Issues

The Architect is a person always open to any action because of failure and negligence. He under their duty to make sure all work completed and followed a specification in a contract. Many questions and issues have been arising especially when a building collapse or construction fails. Consequences of that the architect was after blamed for failure of inspect a works.

Many Architect claims that supervision and inspection are similar and same responsible to a contractor. Inspection involves looking and noting, possibly even carrying out tests. Supervision, however, not only covers inspection but also the issuing of detailed directions regarding the execution of the works. Supervision can only be carried out by someone with the requisite authority to ensure that the work is carried out in a particular way. Inspection is not something to be carried out lightly. Some architects simply wander onto the

⁶ Robert Beaton (1976) The Architect and The Law : RIA: page 2

site with no clear idea of what they expect to find or indeed what they should be looking for.⁷

Several cases have pointed out where architect has not performed his duty of inspection accordingly, it should still be remembered that the architect has a duty under his conditions of engagement, to take due care in making inspections and is still responsible to the client to exercise skill in observing any departure from the contract documents that may be seen at the time of the inspection.⁸

The architect can be sue by client in negligence or failure on inspection, in a refer case of *McGlenn v Waltham Contractors Ltd and others (No 3)*⁹

It can sometimes be the case that an employer with a claim for bad workmanship against a contractor makes the same claim automatically against the inspecting officer, on the assumption that, if there is a defect, then the inspector must have been negligent or in breach of contract for missing the defect during construction. That seems to me to be a misconceived approach. The architect does not guarantee that his inspection will reveal or prevent all defective work.

From the cases, they have been highlighted whether inspector must have been negligent or in breach of contract when defects happen in constructions. This is liability that been issue by many case whether architect

⁷ David Chappel & Andrew Willis (2006) *The Architect in Practise* : Blackwell at pg 233

⁸ Martyn D. Chapman & Robert G. Beaton (1980) *The Architect and claims of Professional Negligence* : RIAI at pg 21

⁹ [2007] EWHC 149 (TCC)

is under negligence or failure to inspect. The judge also stated that architect does not guarantee that his inspection will prevent all defective works. The statement is conflict with a duties stated in a professional rules and construction contract that an architect must perform a duties to client with a skill and care as an agent to client.

Therefore the architect must be determining whether he is liable for any loss, damage or injury which the employer suffers due to his negligence in inspection. In a statement by Robert Beaton, architect is not liable merely because his client suffers some loss or damage, but only if he himself has committed some act or omission which, in the eyes of the law, constitutes negligence.¹⁰ In other cases negligence cannot be claimed by a client because of poor inspection by architect in a difference failure of duties.

1.3 Objective Of Study

The objective of this study is to determine liability of The Architect in connection with inspection during construction stage.

1.4 Limitation Of Study

The scope of this study will be confined to the following areas:

¹⁰ Robert Beaton (1976) The Architect and The Law :RIA : page 19

- 20 years duration of cases fall under conventional system because this method still is the common method used.
- This study will be limited to contractual liability between the client and the Architect.
- Rules and regulations related with inspection of the site in Malaysia and other countries.

1.5 The Significant Of Research

From the research finding, the future research on corrective measures can be carried out later to overcome or decrease the number of actions towards the professionals liability with the intention that the professionals are remain trustable and reliable into an inspections of the site.

1.6 Research Methodology

Below are several approaches that will be taken to achieve the objectives.

Firstly, initial literature review was done in order to obtain the overview of the concept of this topic. 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 next stage is the data collection stage. After the research issue and objectives have been identified, various documentation and literature review regarding to the research field 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 and other Legal Database. The secondary sources include books, articles, seminar papers, newspaper as well as information from electronic media database on the construction contract law. These sources are important to complete the literature review chapter.

After the data collection stage, the author will analyse 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.

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.

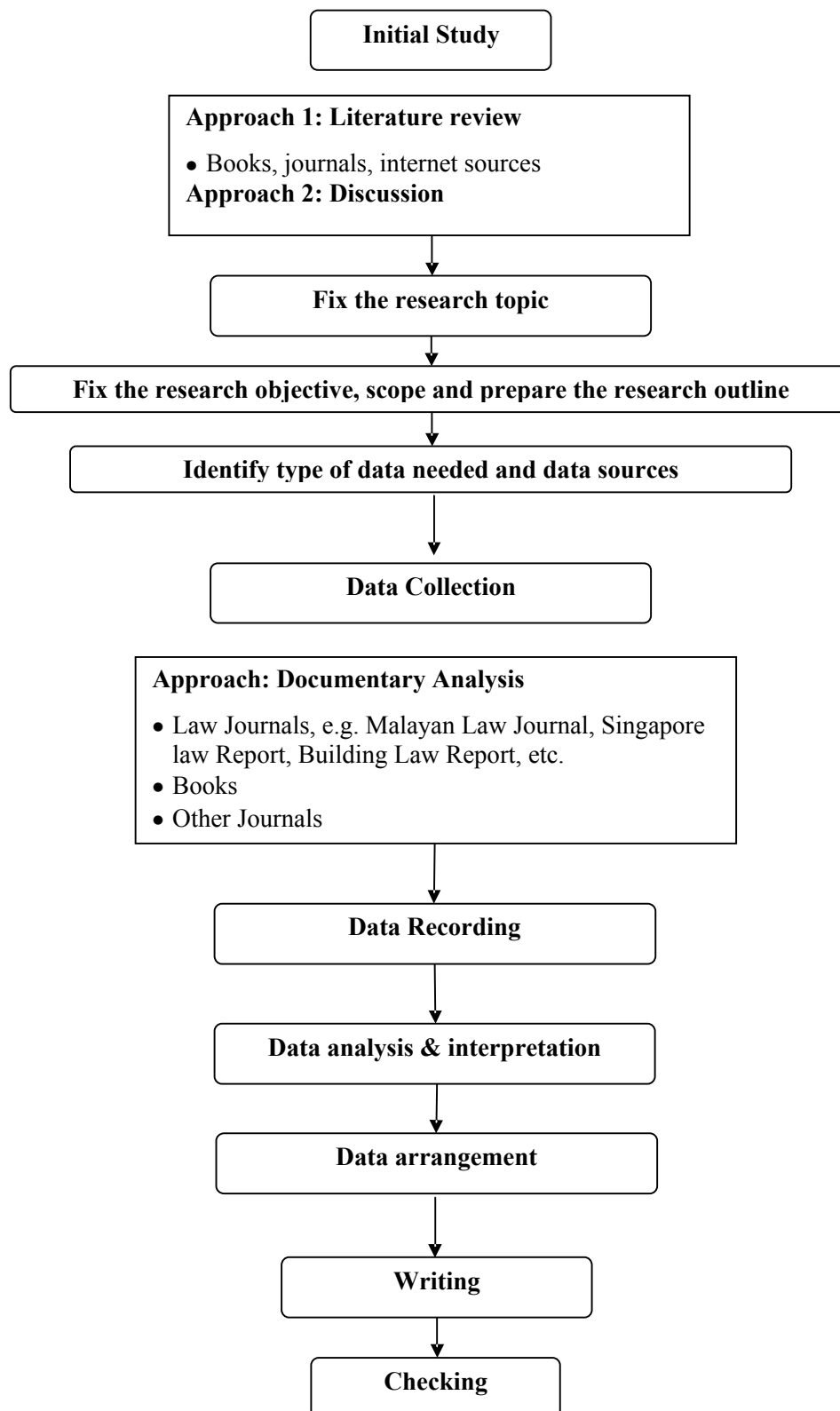


Diagram 1.1 Research Process and Methodology

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