THE IMPOSITION OF DUTIES OF CARE BY THIRD PARTIES IN TORT

MAZURA BT MAHDZIR

UNIVERSITI TEKNOLOGI MALAYSIA
THE IMPOSITION OF DUTIES OF CARE BY THIRD PARTIES IN TORT

MAZURA BT MAHDZIR

A project report submitted in partial fulfillment of the requirements for the award of the degree of Master of Science (Construction Contract Management)

Faculty of Built Environment

Universiti Teknologi Malaysia

APRIL 2010
To my beloved Mother and Father.

Sister and Brothers

Thank you for your support, guidance, and everything.
ACKNOWLEDGEMENTS

This master project was successfully completed with contribution from many people to whom I would like to convey my appreciation and indebtedness. First and foremost, I would like to express my appreciation to my supervisor, Assoc. Prof. Dr. Maizon Hashim, for her valuable guidance, ideas, time and patient throughout the entire journey of this research. In fact, I’m so grateful that finally I managed to complete it on time due to her encouragement and effective supervision.

A special gratitude must also go to all lecturers under the program of Master of Science (Construction Contract Management), for sincerely provides me with valuable knowledge during the process of learning. Besides that, I’m deeply indebtedness to my dearest parents, Mahadzir and Maznah, as well as my sister and brothers for their boundless understanding, cooperation and moral support.

Unforgettable, I would like to extend my indebtedness to all my classmates, friends or other individual members, who has lend me a hand and contributed in some way during the accomplishment of this research study.
ABSTRACT

The privity rule has give rise to many criticisms due to its injustice and inconvenience. In realizing this situation, various means or mechanisms were available to circumvent the privity rule including tort of negligence. Nevertheless, it may have its own weakness that is; it is difficult to establish a duty of care owed by promisor in recovering of pure economic loss claim. Hence, this dissertation intends to examine the claims by third parties in tort and look into their problems in imposing a duty of care owed by the promisors. By adopting the judicial decision from various cases, the scope of this research is confined with the third parties claim namely contractors or builders, owners or subsequent owners and purchasers or subsequent purchasers. The findings revealed that of 21 cases, only five managed to prove a duty of care owed by professional man, whereas the rest proved otherwise. To recap, the recovery of claims by third parties remains difficult and we might concluded that tort of negligence provides uncertainties in protecting their rights. Indirectly, it was not an effective mechanism to circumvent the privity rule’s problems as yet it was inadequately protecting third-party’s rights in certain situations. Therefore, they may utilize this research as guidance so that, they have a better understanding in relation to its operation.
ABSTRAK

# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DECLARATION</td>
<td>ii</td>
</tr>
<tr>
<td></td>
<td>DEDICATION</td>
<td>iii</td>
</tr>
<tr>
<td></td>
<td>ACKNOWLEDGMENTS</td>
<td>iv</td>
</tr>
<tr>
<td></td>
<td>ABSTRACT</td>
<td>v</td>
</tr>
<tr>
<td></td>
<td>ABSTRAK</td>
<td>vi</td>
</tr>
<tr>
<td></td>
<td>TABLE OF CONTENT</td>
<td>vii</td>
</tr>
<tr>
<td></td>
<td>LIST OF CASES</td>
<td>xii</td>
</tr>
<tr>
<td></td>
<td>LIST OF FIGURE</td>
<td>xviii</td>
</tr>
<tr>
<td></td>
<td>LIST OF TABLES</td>
<td>xviii</td>
</tr>
</tbody>
</table>

1 INTRODUCTION 1

1.1 Background Study 1
1.2 Statement of issue 4
1.3 Objective of Study 6
1.4 Scope and Limitation of Study 6
1.5 Significance of Study 7
1.6 Research Methodology 8
   1.6.1 First Stage: Identifying the Research Issue 9
1.6.2 Second Stage: Literature Review 9
1.6.3 Third Stage: Data Collection 9
<table>
<thead>
<tr>
<th>1.6.4 Fourth Stage: Data Analysis</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.6.5 Fifth Stage: Conclusion and Recommendations</td>
<td>11</td>
</tr>
<tr>
<td>1.7 Organisation of report</td>
<td>11</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td><strong>15</strong></td>
</tr>
<tr>
<td><strong>TORT OF NEGLIGENCE</strong></td>
<td></td>
</tr>
<tr>
<td>2.1 Introduction</td>
<td>15</td>
</tr>
<tr>
<td>2.2 Nature of law of tort</td>
<td>16</td>
</tr>
<tr>
<td>2.3 Definition of negligence</td>
<td>18</td>
</tr>
<tr>
<td>2.3.1 Elements of tort of negligence</td>
<td>20</td>
</tr>
<tr>
<td>2.4 Definition of defendant or promisor</td>
<td>21</td>
</tr>
<tr>
<td>2.5 Definition of claimant or third party</td>
<td>26</td>
</tr>
<tr>
<td>2.6 Theoretical Basis for Duty of Care and its Development</td>
<td>28</td>
</tr>
<tr>
<td>2.6.1 Lord Atkin’s approach</td>
<td>29</td>
</tr>
<tr>
<td>2.6.2 Hedley Byrne Approach</td>
<td>30</td>
</tr>
<tr>
<td>2.6.3 Inclusive Approach</td>
<td>31</td>
</tr>
<tr>
<td>2.6.4 Threethfold Test</td>
<td>34</td>
</tr>
<tr>
<td>2.6.5 The incremental approach</td>
<td>35</td>
</tr>
<tr>
<td>2.6.6 Neighbour principle in Malaysia</td>
<td>36</td>
</tr>
<tr>
<td>2.7 Conclusion</td>
<td>36</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>38</strong></td>
</tr>
<tr>
<td><strong>DUTIES OF CARE TO THIRD PARTIES</strong></td>
<td></td>
</tr>
<tr>
<td>3.1 Introduction</td>
<td>38</td>
</tr>
<tr>
<td>3.2 Contractual liability</td>
<td>40</td>
</tr>
<tr>
<td>3.3 Tortious liability</td>
<td>43</td>
</tr>
<tr>
<td>3.4 The Standard of Care and Skill</td>
<td>43</td>
</tr>
</tbody>
</table>
3.5 Duties at common law to third parties 45
  3.5.1 Duties of care to contractors or builders 46
    3.5.1.1 Instruction to the contractor in variation of works or contracts 48
    3.5.1.2 Information to the contractor 50
    3.5.1.3 Supervision and inspection 53
    3.5.1.4 Certification and other decision making 56
  3.5.2 Duties of care to owners or subsequent owners 60
    3.5.1.1 Selection of materials 62
    3.5.1.2 Design and construction 64
  3.5.3 Duties of care to purchasers or subsequent purchasers 65
    3.5.3.1 Preparation of statements 65
    3.5.3.2 Design and construction 68
  3.6 Duties imposed by statues to third parties 68
    3.6.1 The Defective Premise Act 1972 68
    3.6.2 Supply of Goods and Services Act 1982 69
    3.6.3 Others statues 70
  3.7 Conclusion 70

4 Recovery of Claim by Third Parties 72
  4.1 Introduction 72
  4.2 Definition of pure economic loss 74
  4.3 Remoteness of damage 74
4.3.1 Caused by relevant breach duty 75
4.3.2 Foreseeability 76
4.4 Limitation of actions 76
  4.4.1 Periods of limitation 77
    4.4.1.1 English perspective 78
    4.4.1.2 Malaysia perspective 79
    4.4.1.3 Singapore perspective 80
    4.4.1.4 When does the cause of action occur 80
  4.4.1.5 The limitation rules issue pertaining to time starts to run 81
  4.4.1.6 Effect of limitation period to subsequent owners 84
4.5 Exclusion or Restriction of liability 85
  4.5.1 To clients 86
  4.5.2 To third parties 87
4.6 Conclusion 88

5 THE IMPOSITION OF DUTIES OF CARE BY THIRD PARTIES 89
5.1 Introduction 89
5.2 The position of the third parties rights 90
  5.2.1 Third party involving other members of construction team (contractors or builders)
    5.2.1.1 Review of third party rights 100
  5.2.2 Third party involving an individual with an interest in the construction (owners or subsequent owners) and (purchasers or subsequent purchasers) 107
# LIST OF CASES

<table>
<thead>
<tr>
<th>CASES</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Ann v Merton London Borough Council</em> [1978] AC 728</td>
<td>31,32,33,35</td>
</tr>
<tr>
<td><em>Auto Concrete Curb Ltd v South Nation River Conservation Authority</em> [1993] 3 S.C.R 201</td>
<td>94,102,139,135</td>
</tr>
<tr>
<td><em>Balfour Beatty Construction (Scotland) Ltd v Scottish Power Plc</em> [1994] 71 B.L.R 20, HL</td>
<td>76</td>
</tr>
<tr>
<td><em>Bank Bumiputera Malaysia Bhd v Tetuan Wan Marican Hamzah &amp; Shaik &amp; Others</em> [1994] 1 MLJ 124</td>
<td>19,82</td>
</tr>
<tr>
<td><em>Blyth v Birmingham Waterworks Co</em> [1856] 11 Exch 781 at 784</td>
<td>19</td>
</tr>
<tr>
<td><em>Bolam v Friern Hospital Management Committee</em> [1957] 2 All ER 118</td>
<td>44</td>
</tr>
<tr>
<td><em>Bryan v Maloney</em> [1995] 74 B.L.R. 35</td>
<td>109,120,130,137</td>
</tr>
<tr>
<td><em>Burnett v. Took Engineering Inc. et al</em> [2000] BCSC 1630</td>
<td>114,123,130</td>
</tr>
<tr>
<td><em>Candler v Crane Christmast &amp; Co</em> [1951] 2 K.B. 164</td>
<td>45</td>
</tr>
<tr>
<td><em>Caparo Industries plc v Dickman</em> [1989] 1 All ER 798 (CA); [1990] 1 All ER 568 (HL)</td>
<td>34</td>
</tr>
<tr>
<td><em>Chambers v Goldthorpe</em> [1901] 1K.B. 624, CA</td>
<td>57</td>
</tr>
<tr>
<td><em>Clay v AJ Crump Ltd</em> [1964] 1 QB 533</td>
<td>55</td>
</tr>
</tbody>
</table>
Clayton v Woodman & Son (Builders) Ltd [1962] 2 QB 533 55
Corfield v Grant [1992] 29 Con. L.R 58 52
Cooper v Langdon [1841] 9 M&W 60 50
D& F Estates Ltd v Church Commissioners for England [1989] A.C.177 61,81,82,83
De Beers Abrasive Products Ltd v International General Electrical Co. of New York Ltd [1975] 1 W.L.R. 972 at 978 (Walton J.) 67
Donoghue v Stevenson [1932] AC 562 at 580 29,122,137
Driver v William Willett (Contractors) Ltd[1969] 1 All E.R 665 at 673 75
Dunlop Pneumatic Tyre Co Ltd vs Selfridge & Co Ltd [1915] AC 847 2
Eckersley v Binnie & Partners [1998] 18 Con. L.R. 1 45
Edgeworth Construction Ltd v N D Lee & Associates Ltd [1991] 54 BLR 11 93,102,130,135
Elaine Heinicke vs Cooper Rankin Ltd. and The City of Winnipeg [2004] MBQB 273 117,124,130,136
Esso Petroleum Co Ltd v Mardon [1976] Q.B. 801 67
FG Minter Ltd v Welsh Health Technical Services Organization [1979] 11 BLR 1 58
Galliford Try Infrastructure Ltd v Mott MacDonald Ltd [2008] EWHC 1570 99,105,129,135
George Fischer Holdings Ltd v Multi Design Consultants Ltd [1998] 61 Con. L.R. 85 59
Greaves & Co (Contractors) Ltd v Baynham Meikle & Partners [1975] 1 W.L.R 1095

Governors of the Peabody Donation Fund v Sir Lindsay Parkinson & Co Ltd [1985] AC 210

Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465
Henderson v Merrett Syndicates Ltd (No. 2) [1997] L.R.L.R 265
Home Office v Dorset Yacht Co Ltd [1970] AC 1004
Independent Broadcasting Authority v EMI Electronics & BICC Construction Limited [1980] 14 BLR 1 HL

J. Jarvis & Sons Ltd v Castle Wharf Dev. Ltd. and others [2001] ABC.L.R.01

Jacobs v Merton & Partners [1994] 72 BLR 92
James v Simon [1899] 1 F (Ct. of Sess) 1211 at p.1222
John Holland Construction and Engineering Pty Ltd v Majorca Projects Pty Ltd and Anor [1997] BCTC Uned 911

John Laing Construction Ltd v County and District Properties Ltd [1982] 23 BLR 1

Junior Books Ltd v Veitchi Co Ltd [1983] 1 AC 520
Kaliszewska v John Clague & Partners [1984] 5 Con. L.R. 62
KC Chan Brothers Developments Sdn Bhd v Tan Kon Seng [2001] 6 MLJ 636

Kepong Prospecting Ltd & Ors v A.E Schmidt & Marjorie Schmidt [1968] MLJ 170

Lancashire and Cheshire Association of Baptist Churches Inc v Howard and Seddon Partnership [1991] 65 BLR 21 (UK)

Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd [1986] 2 All ER 145
Leon Engineering & Construction Co Ltd v KA Duk Investment Co Ltd [1989] 47 Build LR 139

LIDL Properties v Clarke Bond Partnership [1998] Env. L.R 622

Lochgelly Iron and Coal Co v Mc Mullan [1934] AC at 25

Lok Kwan Moi & Ors v Ramli bin Jamil & Ors Government of Malaysia [1984] 1 MLJ 46

London Borough of Merton v Stanley Hugh Leach Ltd [1985] 32 B.L.R 51

Machin v Adams and others [1997] 84 Build LR 79


Midland Bank Trust Co Ltd v Hett Stubbs & Kemp [1979] Ch.384

Murphy v Brentwood [1991] 1 AC at 475F

Neodox Ltd v Borough of Swindon Pendlebury [1958] 5 B.L.R. 34

Nitrigin Eireann Teoranta v Inco Alloys Ltd[1991] 60 BLR 65

Nye Saunders and Partners v Bristow [1987] 37 BLR 92


Pacific Associates Inc and another v Baxter and others [1988] 44 BLR 33

Payne v John Setchell Ltd [2002] BLR 489

People’s Parkway Development Pte Ltd v Arkitek Tenggara [1993] 1 SLR 704

Pirelli General Cable Works Ltd v Oscar Faber & Partners [1983] 2 AC 1

92,101,132,135

112,121,129,136

19

36

55

110,121,129,136

111,121,130,137

42

35,63,81

51

82

46

59

91,101,128,132,135

67,115,123,129,136

83

81
Pozzalanic Ltytag Ltd v Bryan Hobson Associates [1999] BLR 267


Rickard Construction Pty Ltd v Rickard Hails Moretti Pty Ltd [2006] NSWCA 356

Rimmer v Liverpool City Council [1985] QB 1 [1984] 1 All ER 930, CA


Ross v Caunters [1980] Ch 297

Sallis & Co v Callil [1988] 4 Const LJ 125

Sathu v Hawthornden Rubber Estate Co Ltd [1961] 27 MLJ 318

Sea Harvest Corporation (Pty) Ltd v Duncan Dock Cold Storage (Pty) Ltd [2000] 1 S.A. 827

Sharpe v San Paolo Brazilian Railway Co [1873] LR 8 Ch App 597

Shui On Construction Ltd v Shui Kay Co Ltd [1985] 4 Const LJ 305

Sivakumaran a/l Selvaraj & 2 Ors (Suing Through Their Mother and Next Friend, Selvi a/p Muthusamy) & Anor v Yu Pan & Anor [1994] 4 CLJ 1066

Six Continents Retail Ltd v Carford Catering Ltd [2003] EWCA Civ 1790


Spandeck Engineering (S) Pte Ltd v Defence Science and Technology Agency [2007] SGCA 37

Steven Phoa Cheng Loon & Ors v Highland Properties Sdn Bhd & Ors [2000] 4 MLJ 200
Sutcliffe v Chippendale & Edmonson [1971] 18 BLR 149 at 165-166; [1982] 18 B.L.R 149, QBD

Sutcliffe v Thackrah [1974] 7ER 859 4BLR80


Thorn v London Corporation [1876] 1 App Cas 120

Tweddle v Atkinson [1861] ER 369


William Tomkinson and Sons Ltd v Parochial Church Council of St Michael and others [1990] 6 Const LJ 319


Woolcock Street Investments Pty Ltd v CDG Pty Ltd (formerly Cardno & Davies Australia Pty Ltd) and another [2004] HCA 16
LIST OF FIGURE

<table>
<thead>
<tr>
<th>FIGURE NO</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Figure 1-1:</td>
<td>Flow Chart of the Research Methodology</td>
<td>13</td>
</tr>
</tbody>
</table>

LIST OF TABLES

<table>
<thead>
<tr>
<th>TABLE NO</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 5.2.1.1 :</td>
<td>The summary of selected court cases in respect of third party rights to claim made by contractors or builders</td>
<td>102</td>
</tr>
<tr>
<td>Table 5.2.2.2 :</td>
<td>The summary of selected court cases in respect of third party rights to claim made by (owners or subsequent owners) and (purchasers or subsequent purchasers).</td>
<td>120</td>
</tr>
</tbody>
</table>
CHAPTER ONE

INTRODUCTION

1.1 Background of study

The doctrine of privity of contract or so called the privity rule, fundamentally concerned with the law of contract that only those who are parties to the contract can sue or be sued on it. Therefore, a person who is not the party to a contract, which refers to third party, could not rely of this rule. Similarly, the parties to a contract cannot impose liabilities upon them who are normally considered as a stranger to the original contract.

In other words, the general principal of this rule contains that only the parties to the contract are bound by or entitled to a remedy for enforcement of the obligations under the contract. Thus, if he is not the party to the contract,
the person may not enforce a contractual promise and obtain remedies for its breach, even when the promise was expressly made for that person’s benefit\(^1\).

It should be noted that, traditionally, the utilization of this rule has long been accepted and established in English private law, as illustrated in the classic case of *Tweddle v Atkinson\(^2\)*. This case lies on the principle that consideration must move from the promise, thus, again the action of the plaintiff failed due to the reason that no stranger to the consideration can take advantage of the contract although made for his benefit\(^3\). It has further been applied as in the case of *Dunlop Pneumatic Tyre Co Ltd vs Selfridge & Co Ltd*\(^4\).

This rule is also applicable in Malaysian even though the Contracts Act 1950 (Act 136) has no express provision pertaining to the doctrine of privity of contract\(^5\). In *Kepong Prospecting Ltd & Ors v A.E Schmidt & Marjorie Schmidt*\(^6\) therefore, it gives the gloom picture that the doctrine still applies in Malaysia, as it only recognized the person who is the party to a

---

2. [1861] ER 369
4. [1915] AC 847
6. [1968] MLJ 170
contract to take the advantage. It has been further applied by the Supreme Court in *Emar Sdn Bhd v Aidigi Sdn Bhd*\(^7\).

Undoubtedly, this principle, which has been a keystone of English contract law for the past 139 years\(^8\), might gives enormous benefits to the parties of contract to limit their exposure to contractual liability to one party. Putting it another way, the privity rule might gives freedom for contracting parties to confine their rights by varying the contract in certain situations. For instance, the existence of the contract between the employer and the contract administrator would be an advantage for the contract administrator to avoid any claim raised by the contractor. The reply would be that the contractor was not a party to the contract and so no action for breach could be brought by them.

Despite of the advantages that it has, the privity rule also has come under heavy criticism due to its rigidity application often causes inconvenience in practice\(^9\). Besides that, it often results in injustice\(^10\). Lord Diplock further pointed out that it was 'an anachronistic shortcoming that has

\(^7\)[1992] 2 MLJ 734


for many years been regarded as a reproach to English private law\textsuperscript{11}. In fact, these arguments arose due to frustration in relation to its failure to protect the third party contractual benefits, which provide them with unfair solution.

Other, it was inadequately protecting not only the promisee's expectation interest but also third-party's expectation interest. Thus, the third party, though a stranger to the contract between the promisor and promisee, is party to an identical, or identical in part, ('collateral') contract with the promisor\textsuperscript{12}.

\section*{1.2 Statement of issue}

In considering the weaknesses incorporated within the privity rule, there are various mechanisms have been available to circumvent that rule instead. Of the prominent mechanisms is the tort of negligence, where the third party brings their claim against the parties to a contract. In fact, the utilization of this mechanism remains significant due to some advantages.

\textsuperscript{11}Swain v Law Society [1983] 1 AC 598 at p 611.

Amongst others are, it gives flexibility in terms of its the conceptual framework as its scope falls to be determined by the control device of the duty of care such as the 'neighbour principle', the Anns principle or 'justice and reasonableness', or whether they are taken on a casuistic or incremental basis. Other, it avoids any need to find consideration for the undertaking whose breach it is claimed should give rise to liability and it may therefore sanction breach of gratuitous undertakings (as defined by the rules of consideration).\textsuperscript{13}

Besides of its advantages, this mechanism also contains its own weakness, that is, in bringing an action in tort, a third party may only be permitted to enforce the terms of a contract where it can be shown that the promisor owed a duty of care to the third party claimant\textsuperscript{14}.

Nevertheless, it will not always be easy to establish a duty of care and show that the promisor was negligent\textsuperscript{15}. In fact, the major difficulty faced by a third party is to impose a duty of care owed by the promisor as which has been breached, particularly in recovering the claim for pure economic loss\textsuperscript{16}. In other words, the issue normally relates with its problems to protect the third party rights in tort.


\textsuperscript{14}Poole, J (2006). \textit{Textbook on Contract Law} (8\textsuperscript{th}Ed). Oxford University Press: New York

\textsuperscript{15}Hilliard, J and O'Sullivan, J (2004). \textit{The law of contract} (1st Ed). Oxford University Press : USA

In the light of this weakness, it gives rise to uncertainties with positions of third party’s rights to claim notably with judgment obtained from Commonwealth countries. As a consequence, it requires us to examine the following objective.

1.3 Objective of study

The objective of this research is:

i. To examine the recovery of claims by third parties in tort
ii. To identify their problems in imposing a duty of care owed by the promisors.

1.4 Scope and limitation of study

This research is confined with the problems faced by third parties in recovering the pure economic loss claim. Thus, it involved three types of third parties claim namely contractors or builders claim against contract administrator, the owners or subsequent owners claim against designer or
constructor and the subsequent purchasers or purchasers claim against designer or constructor.

The case analysed, included one (1) from Hong Kong, two (2) from Malaysia, six (6) from Canada, four (4) from Australia, six (6) from UK, one (1) from Singapore and one (1) from New Zealand. On the other hand, there is no limitation for court cases referred unless it was reported in Lexis Nexis.

1.5 Significance of study

This research is primarily intended to be a reference not only for parties within the construction but also the outsiders, who were really interested with contract particularly. It provides information for them in relation to the mechanisms available under the tort of negligence, which is designed to avoid the unfairness of the doctrine of privity of contract.

Aims to enhance their knowledge with regard to this mechanism, it also valuable for a person who has suffered losses or known to be a third party, to realize the effect of the mechanism with their rights completely. Is it they have been protected under the law of tort? Hence, various circumstances will be studied by looking into the several cases, which demonstrated the problems faced by third parties in imposing a duty of care owed by promisor.
Thus, they managed to identify the problems which normally arise in that mechanism through the comprehensive study regarding the cases found out in construction. From this study, they would then have a better understanding pertaining with their rights to claim, whether it can be recovered or not.

In doing so, they will be more appreciate with the various reasons behind each cases and take a safety measure if they have intended to enter into future contracts. At last, the problems arisen in the numerous cases pertaining to those mechanisms in protecting the third party rights could be minimized if the parties really comprehend the operation under the tort of negligence.

1.6 Research Methodology

This research consists of systematic approach in order to achieve the objective of study. Generally, it consists of five stages namely identifying the research issue, literature review, data collection, data analysis, conclusion and recommendations.
1.6.1 First Stage: Identifying the Research Issue

Initially, the primary step in doing this research is by identifying the research issue. The formulation of the issue normally is motivated from various materials like articles, journals, newspaper and books. Once the idea is identified, the objective then would be developed, which focus on examining the problems faced by third parties in tort of negligence and the recovery of the claims.

1.6.2 Second Stage: Literature Review

The literature review stage normally will give the overview concept of this research briefly. In order to give an overall understanding, this study can be divided into three chapters, which are the tort of negligence, the duties of care to third parties and the recovery of claims by third parties. Thus, the information would rely heavily from various sources of materials like books in the fields of construction contract, journals, newspaper, articles, lecturer notes and magazines.
1.6.3 Third Stage: Data Collection

This stage concerned with collecting all the relevant data from numerous cases obtained from Malayan Law Journal, Building Law Report and other journals from various countries.

1.6.4 Fourth Stage: Data Analysis

Once the data collection is made, the analysis stage would be carried out to evaluate, interpret and arrange the information prudently. The initial process started with reviewing the tort of negligence provided to mitigate the rigidity of the privity rule. The focus of the study would eventually focused on examining judicial decisions and facts of the case from various countries in order to understand the problems incorporated within the mechanism, that is to impose a duty of care. Thus, a conclusion whether the claims are recoverable or not is determined. Consequently, it is studied and developed, so that broad comparison could be done critically.
1.6.5 Fifth Stage: Conclusion and Recommendations

It is the stage to review the data and information founded from 21 of cases, to ensure the listed objective is achieved. The findings therefore, are obtained based on the data collection and analysis before the conclusion is made. Besides that, the recommendation for further research would be encouraged.

1.7 Organisation of report

Chapter 1 consists of the background of study for the research, the objective of study, scope and limitation of study, research methodology and the organisation of chapter.

Chapter 2 studied the basic concept of tort of negligence including the nature of the law of tort and definition of negligence. The elements of negligence and its relation with professional man and third parties then are identified. Once established, the duty of care and its development is carried out to recognize several devices used as a basis to claim on various types of loss.
Chapter 3 is focused on studying the duties of care owed by professional man against third parties at common law. In this regard, the study will extend to identify the professional duties towards three types of third parties namely, contractors or builders, purchasers or subsequent purchasers and owners or subsequent owners. The scope of duties imposed by statues also needs to be adhered apart from knowing the standard of care and skills that is required to be applied.

Chapter 4 studied the recovery of claims by third parties. To understand deeply, the definition of pure economic loss will be discussed. This research also concerned to identify the other criteria to claim which are the causation and foreseeability concept. The scope of successful claims also is covered, which requires us to know the limitation period of actionable action by third parties as well as exclusion or restriction of liability involved to limit the professional duties.

Chapter 5 analysed the cases obtained from the various commonwealth jurisdictions in order to get the results, which concerned about the problems faced by the third parties in imposing a duty of care against professional man. So as with the recoverability of pure economic loss will be determined.

Chapter 6 set out the conclusion and recommendations for further research once the findings is analysed and compiled.
INITIAL STUDY

PHASE ONE

RESEARCH ISSUE

PHASE TWO

RESEARCH OBJECTIVE

LITERATURE REVIEW

PHASE THREE

RESEARCH FRAMEWORK

PHASE FOUR

DATA COLLECTION

Primary data
- Case study

Secondary data
- Textbooks
- Journals
- Articles
- Internets
- Lexis Nexis
Figure 1-1: Flow Chart of the Research Methodology.
REFERENCE

   Palgrave MacMillan : New York

   Sweet and Maxwell Asia : Malaysia

   Malayan Law Journal Sdn Bhd : Kuala Lumpur


