



MEDICO-LEGAL CLAIM AND LEGAL SUITS

SHARMINI NAVARATNAM
ADVOCATE AND SOLICITOR

WRIT OF SUMMONS AND STATEMENT OF CLAIM

- Sessions or High Court
 - RM 1,000,000.00 and below the Sessions Court
 - Usually not filed in the Magistrates Court
- Correct Jurisdiction
 - Where the hospital is located
- Statement of Claim to be endorsed with writ
 - Order 6 Rule 2 Rules of Court 2012

WRIT OF SUMMONS AND STATEMENT OF CLAIM

- Parties
 - Tortfeasors (eg. Hospital, Doctors, Nurses etc)
 - If Public Hospital, then have to name individual doctors or nurses (Section 6 Government Proceedings Act)
- Cause of Action
 - Negligence (Duty of care and breach)
- Particulars of Negligence
 - Usually based on Plaintiff's expert's comments on failure to comply with Standard Practice

WRIT OF SUMMONS AND STATEMENT OF CLAIM

- Personal Injury Claims
- Breach caused Injury
- Particulars of Injuries
 - This is based on the initial medical report and/or expert report
- Special Damages
 - Out of pocket expenses incurred and disbursements incurred by the patient
- Relief
 - General Damages
 - Special Damages
 - Interests and Costs

FATAL CLAIMS

- ▶ Dependency claim (Section 7 Civil Law Act 1956)
 - ▶ Categories of Plaintiff
 - ▶ Plaintiff must be working and is supporting family
 - ▶ Formula (Multiplier is 55- Age of Plaintiff Divided by 2)
 - ▶ Multiplicand Income of Plaintiff less living expenses
 - ▶ Can claim for bereavement and funeral expenses

FATAL CLAIMS

- ▶ Estate claims (Section 8 Civil Law Act 1956)
 - ▶ Must be brought by legal representative of the state
 - ▶ Pain and suffering prior to death
 - ▶ Funeral Expenses
 - ▶ Aggravated Damages?

LIMITATION

- ▶ Limitation Act 1953 (Peninsular Malaysia)
- ▶ Limitation Ordinance 1960 (Sabah)
- ▶ Limitation Ordinance 1965 (Sarawak)

Limitation Act 1953 (Peninsular Malaysia)

Time Limits (Personal Injury)

- ▶ Peninsular Malaysia : 6 Years (Section 6(1)(a) Limitation Act 1953)
- ▶ Sabah and Sarawak: 3 years

Time Limits Fatal Claims

- ▶ Estate Claims : 3 years
- ▶ Dependency Claim: 6 years

CLAIMS AGAINST GOVERNMENT/ PUBLIC UNIVERSITIES

- ▶ The Public Authorities Protection Act 1948 applies to any university which is under the University Colleges Act 1971. (Section 24(b))
- ▶ Employees of Universities deemed to be Public Servants. (Section 24(d))
- ▶ Must be brought within thirty six (36) months of act or neglect (Section 2(a))

EXTENSION OF LIMITATION PERIOD

- Patients under disability (Section 24 Limitation Act 1953)
 - Infancy
 - Unsoundness of mind
- Time limit is 6 years from the date persons ceased to be under disability.

EXTENSION OF LIMITATION PERIOD

- Infancy
 - Section 2 Age of Majority Act 1971
 - Reaches age of majority at age 18
 - Therefore, claims can be brought for injuries suffered by infants up to the age of 24
- Unsoundness of Mind
 - Action may be brought 6 years from the date person ceases to be under disability.
 - For a brain damaged patient, the patient continues to be under disability so limitation can be extended Reaches age of majority at age 18

BURDEN OF PROOF

BURDEN OF PROOF

- ▶ On Patient
 - ▶ Section 101 and 102 Evidence Act 1950
- ▶ Res Ipsa loquitor
 - ▶ rarely applicable if defendant can show an alternative cause for injury

EXPERT EVIDENCE

- ▶ Section 45 and 46 Evidence Act 1950
- ▶ Time of Appointment
 - ▶ As soon as possible after adverse event
- ▶ If not done earlier, then as soon as writ served

WHO SHOULD YOU APPOINT?

- ▶ Must be of a correct specialty
- ▶ Must be independent
 - ▶ Cannot be from same hospital

LAW ON EXPERT EVIDENCE

- ▶ Order 40A Rule 2 and 3 of the Rules of Court 2012 set out duties and responsibility of expert.
- ▶ Expert must be competent, qualified, objective and independent
- ▶ Sophie Ellis v Royal Surrey County Hospital (2003) EWHC 3510
- ▶ Muller v Kings College Hospital NHS Foundation Trust (2017) Med Law Rep 153
- ▶ Dato' Stanley Issacs v Government of Malaysia and 12 Ors (unreported)

OUT OF COURT SETTLEMENT

- ▶ Must be attempted as early as possible
- ▶ Depends primarily on evaluation of expert evidence available
- ▶ Depends if all documentary evidence is available to support defence
- ▶ Depends if all witnesses of fact can give evidence to support the defence case
- ▶ Can be done after meeting of experts
- ▶ Can be done by Plaintiff and Defendant solicitors evaluation evidence
- ▶ Mediation?