Section 95(2) of the Street, Drainage and Building Act 1974: The Highland Towers' Decisions - The Guardian or the Guarded?

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I. Introduction

The decision of the case arising from the Highland Towers tragedy had a widespread effect on almost every person who had been following the development of the case from the time the initial tragedy befell the unfortunate victims of that incident over 12 years ago, till the time when a cause of action to the High Court was brought,[1] followed by the appeal made to the Court of Appeal,[2] and finally to the Federal Court.[3] The case was brought about as a result of the collapse of one of three 12-storey apartment towers collectively known as the Highland Towers on 11 December 1993 killing 48 people. The location of the apartment blocks is in the Mukim of Hulu Klang, Gombak, in the State of Selangor, Malaysia.

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[1] *Steven Phoa Cheng Loon & 72 Ors v Highland Properties Sdn Bhd & 9 Ors* [2000] 3 AMR 3567.

[2] *Arab-Malaysian Finance Bhd v Steven Phoa Cheng Loon & Ors and Other Appeals* [2003] 1 MLJ 567.

[3] *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon & Ors* [2006] 2 MLJ 389.

This case concerned not those who had lost their lives in the tragedy but those who had actually survived without a scratch. Nevertheless, for the latter, the tragedy did not end the day it occurred. It continued to haunt the lives of the plaintiffs, *ie* the survivors, for many years to come. There were many defendants at the initial stage – ten in fact. One of them was the Majlis Perbandaran Ampang Jaya, the local authority which had jurisdiction over the area at the material time. This is the only defendant which proceeded all the way to the highest court of the land to defend its innocence. This defendant was in the end successful, being relinquished of all its liabilities towards the plaintiffs by the Federal Court. It appears that the reason for their victory rested largely on the immunity afforded under the provisions of s 95(2) of the Street, Drainage and Building Act 1974[4] ("SDBA") as well as on policy reasons.

The object of this paper is to study the application of s 95(2) of the SDBA in the context of the current position of immunity afforded to local authorities against a duty of care in relation to building works in Malaysia.[5] This will be done using the aforesaid case as case-study.

II. Background of the case

The Highland Towers were built in front of a steep slope between 1975 and 1978. On this hill slope was a stream referred to as the East Stream. Although named as such, this stream if left alone would have flowed westwards. However it was channelled by a series of culverts to divert the discharge from the stream northwards. In December 1993, Block 1 collapsed after several days of rainfall.

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[4] Act 133.

[5] This article is based on a paper presented by the author at the International Conference on Local Government 2006: "Enhancing Service Delivery by Local Authorities" at The Magellan Sutera Hotel, Kota Kinabalu, 22-24 August 2006.

III. Cause of collapse

The High Court found that the cause of the collapse of Block 1 was due to a rotational retrogressive slide emanating from the high wall behind the Highland Towers. The ground beneath the wall failed because it was saturated with water. The water came from two sources. The first was from the rainfall and the second was from the East Stream.

It had rained continuously for ten days preceding the collapse. Internal drains on the adjoining Arab-Malaysian land would have channelled the water in a controlled manner down the slope, had they been properly maintained. Unfortunately they were not. The drains were blocked with overgrown vegetation, or were made of earth and thus allowed water to saturate the soil. This then caused the severe overflow of water onto the slope.

Water from the East Stream was directed into a pipe culvert which was also found to be wanting in proper maintenance. Many parts were damaged and leaked. Further, the mud pond into which the East Stream poured into before being channelled into the pipe culvert was filled with silt, as was the inlet into the pipe culvert. Since water from the East Stream could not exit through this channel, it simply overflowed and washed over the slope.

IV. At the High Court

The plaintiffs who brought the legal action were not doing so in relation to the deaths which had occurred as a result of the collapse of Block 1. These plaintiffs were the owners/residents of the remaining two blocks. Their concern obviously was that they were not able to sell their apartment units, the value of which had been seriously undermined, nor were they any longer able to utilise them since the local authority had issued strict orders of immediate evacuation from the site. Thus the loss complained of by the plaintiffs was purely financial,

as they did not suffer any physical injury or damage to property caused by the objec. purchased from the developer. Such loss is termed in law as pure economic loss. It is "merely" financial loss deriving from the defect in the object purchased, here being the proprietary interest in the apartments, which was believed to be unstable. Acquisition of a defective item of property is just one example of how pure economic loss can be inflicted.

There are numerous other ways in which the same type of loss can be caused. According to Jones,[6] pure economic losses can be divided into four broad categories. The first category is relevant to the issue currently being discussed in this article *ie* economic loss sustained due to acquisition of a defective item of property which then incurs costs to repair or replace, or falls in value to such an extent that it is completely not worth purchasing. The second category involves some level of physical damage to person or property but not that of the claimant himself. When a third party is injured or suffers physical damage to his property, it may ultimately cause financial losses not only to the third party himself but also to the claimant with whom he is dealing. The last two categories relate to statements made negligently, the accuracy of which is relied upon by a third party or the claimant himself. In these categories, the claimant stands to suffer pure financial losses either as a result of lost opportunities or of bad investment made on the basis of the inaccurate statements.

Claims based on pure economic loss have had a long and arduous journey in the history of common law because of the potential problems they may cause and the endless attempts made by the courts to formulate a suitable test in determining whether a duty of care exists to protect someone from pure economic loss. The reasons for the special treatment given to this type of loss are numerous. One such reason is the often quoted "floodgates" reasoning. Cardozo CJ in the case of *Ultramares Corporation v Touche*[7] described the concern of poten-

[6] Jones, MA, *Textbook on Torts* (Oxford: Oxford University Press, 8th ed, 2002) at p 97.

[7] (1931) 174 NE 441 at p 444; 255 NY 170 at p 179.

tial defendants in the form of "liability in an indeterminate amount for an indeterminate time to an indeterminate class".

In the present case, the plaintiffs brought action against ten defendants for their pure economic losses on the basis of negligence, nuisance, the liability under *Rylands v Fletcher*, and breach of statutory duty. The last cause of action was later abandoned during submission.

The ten defendants in the initial cause of action were:

i. the developer of the Highland Towers and registered owner of the land on which the apartments stood,
ii. the purported architect of the Highland Towers,
iii. the engineer for the Highland Towers,
iv. the local authority which had jurisdiction over the site and its surrounding at the material time,
v. the registered owner of bungalow land at the rear of the Highland Towers,
vi. the company which carried out clearing works on the fifth defendant's land,
vii. the registered owner of land located above the fifth defendant's land,
viii. the provider of management services to the seventh defendant to develop their land,
ix. the State Government of Selangor, and
x. the Director of Lands and Mines of the State of Selangor.

Of the ten, only the sixth, ninth and tenth defendants were found to be not liable. The rest were all found proportionately liable by the trial judge.

V. At the Court of Appeal

Of the seven defendants found liable, only five appealed. They were the third, fourth, fifth, seventh and eighth defendant. The plaintiffs also cross-appealed to the Court of Appeal. The appeals were made on the grounds of, *inter alia*, negligence, title to sue, apportionment of liability, and nuisance. The Court of Appeal dismissed all but the fourth defendant's appeal, and also incidentally or ironically allowed the cross-appeal by the plaintiffs.[8]

VI. At the Federal Court

The only defendant who proceeded to the Federal Court was the fourth defendant, the local authority. Again, the plaintiffs too cross-appealed. This time, however the latter party ran out of luck. The majority decision of the Federal Court allowed the fourth defendant's appeal and dismissed the plaintiffs' cross-appeal.

VII. The fourth defendant – the local authority

The fourth defendant was the Majlis Perbandaran Ampang Jaya ("MPAJ"), the local authority which had jurisdiction over the Highland Towers site and the surrounding areas at the material time. The plaintiffs contended at the High Court trial that this local authority had done wrong in six particular areas. Two allegations each were made in relation to the three stages of the lifetime of the apartments; before the construction was completed, after the completion, and after the collapse. James Foong J had decided that MPAJ was negligent in all of the allegations save for one allegation where it involved an omission on MPAJ's part to take action against the sixth defendant for clearing the fifth defendant's (Arab Malaysian) land. The learned judge said:

[8] It is ironic because the plaintiffs' appeal concerned another aspect of the liability of the fourth defendant.

> As a local authority, the fourth defendant owes a duty of care to the plaintiffs to use reasonable care, skill and diligence to ensure that the hill slope and the drainage thereon were properly accommodated before approving building or other related plans, and during construction stage, to comply with and to ensure the implementation of drainage system. Thus when CFs were applied for, there should be proper and thorough inspection on whether the buildings so built were safe in all aspects and no just confined only to the structure. And after the Highland Towers was erected, to ascertain drainage requirement in the area was adequate to ensure slope stability behind Block 1. Then subsequent to the collapse of Block 1, measures should have been taken to prevent recurrence of the tragedy to Blocks 2 and 3.[9]

It is clear from the abovementioned judgement that a local authority does owe a duty of care towards buyers of constructed buildings in all the three stages as stated above. However, the High Court did not hold the fourth defendant liable in relation to the pre-collapse liability. The only reason for this decision was the application of the provision of s 95(2) of the SDBA. The High Court held that MPAJ was immune from the pre-collapse liability as this comes under one of the limbs of s 95(2) of the SDBA. Further discussion will be made on this point below.

The scope of the duty of care encompasses a wide area; the stage before the approval of the plans, during construction, before the issuance of the CF, after the erection of the building, and after the collapse. The recognition of a distinction between pre-collapse and post-collapse duty specifically becomes even more important when one considers the courts' view as to when immunity may be available to the local authority pursuant to s 95(2) of the SDBA.

VIII. The Street, Drainage & Building Act 1974

Section 95(2) of the SDBA provides as follows:

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[9] *Supra*, n 1 at p 3634.

> The State Authority, local authority and public officer or officer or employee of the local authority shall not be subject to any action, claim, liabilities or demand whatsoever arising out of any building or other works carried out in accordance with the provision of this Act or any by-laws made thereunder or by reason of the fact that such building works or the plans thereof are subject to inspection and approval by the State Authority, local authority, or such public officer or officer or employee of the State Authority or the local authority and nothing in this Act or any by-laws made thereunder shall make it obligatory for the State Authority or the local authority to inspect any building, building works or materials or the site of any proposed building to ascertain that the provisions of this Act or any by-laws made thereunder are complied with or that plans, certificates and notices submitted to him are accurate.

The learned judge held that s 95(2) protected the local authority from liability for their negligence in relation to the pre-collapse stage of the apartments although counsel for the plaintiffs had advanced a number of arguments to countervail against the applicability of this section in this particular case.

IX. Conflict with other statutory provisions

Among the arguments advanced, there was one which evoked some level of interest. This revolved around the issue of the conflict between the provisions of s 95(2) of the SDBA and s 7(3) of the Government Proceedings Act 1956 ("GPA"), as well as s 124 of the Local Government Act 1976 ("LGA") read in line with s 2 of the Public Authorities Protection Act 1948 ("PAPA").

S 7(3) of the GPA provides that:

> Nothing in this section shall prevent the bringing of any suit for damages or compensation arising out of negligence or trespass in the execution of any works of construction or maintenance undertaken by the Government in the exercise of the said public duties.

Whereas S 124 of the LGA provides that:

> The Public Authorities Protection Ordinance 1948, shall apply to any action, suit, prosecution or proceeding against any local authority or against any Councillor, officer, employee, servant or agent of any local authority in respect of any act, neglect or default done or committed.[10]

The PAPA at s 2(a) states:

> Where, after the coming into force of this Act, any suit, action, prosecution… act in pursuance or execution or intended execution of any written law, duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect – the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act, neglect or default complained of or, in the case of continuance of injury or damage, within thirty-six months next after the ceasing thereof.

From the provisions of the above sections, it is clear that generally the government is not precluded from becoming a defendant in a cause of action for liability in negligence unless it is brought outside the stipulated time limit. At first glance, it does seem as though these provisions conflict with the protection afforded by s 95(2) of the SDBA and such was the argument advanced by counsel for the plaintiffs. However the learned judge held that this was not the case. His reason was that Parliament is entitled also to pass legislation to exempt the liabilities of government bodies and s 95(2) is such an example of that entitlement.

With respect, it is also submitted that another reason why they do not conflict is because they in fact *do not* conflict. While s 7(3) of GPA and s 124 of the LGA read with s 2(a) of the PAPA provides the ability to sue the government for certain wrongs done in the course

[10] The Public Authorities Protection Ordinance 1948 later became known as the Public Authorities Protection Act 1948.

of their duties, s 95(2) of the SDBA provides for the exemption from liability specific to building works. Thus, there is nothing to stop one from suing the government, but even if the government is found to be liable, responsibility for the liability is not guaranteed by the former three sections. It is merely an "allowing" provision and not one which provides security for enforcement. To some extent then, these provisions could be said to be quite redundant where building works are concerned.

X. Post-collapse liability of the local authority

This liability concerned the promise made by MPAJ to prepare a master drainage plan for the disaster area to accommodate landowners in the vicinity. The master drainage plan is essential in restoring slope stability and ensuring that a similar fate does not befall the remaining two apartments. This would entail proper management of the East Stream as one of the sources of instability. MPAJ had called a meeting about a year after the collapse and appointed a consultant to prepare the master drainage plan. After a year of silence, yet another meeting was held and another consultant appointed to replace the first. However, till the day of the trial, no such plan was ever produced nor any explanation given by MPAJ despite their knowledge of the urgency and utmost importance of the matter. In the High Court, James Foong J said that:

> This is certainly inexcusable and definitely a breach of the duty of care owed by the fourth defendant to the plaintiffs for not even fulfilling its obligation towards maintenance of the East Stream. For this I find the fourth defendant liable to the plaintiffs for negligence.[11]

It is clear that the court agreed there was a duty of care owed to the plaintiffs at the post-collapse stage. There were actually two matters that came under the post-collapse liability. The first was the master drainage plan as described above. The second was the allegation by

[11] *Supra*, n 1 at p 3642.

the plaintiffs that MPAJ failed in their duty to prevent vandalism and theft to Blocks 2 and 3. After the collapse of Block 1, public security forces were employed to guard the remaining two blocks but they were not as effective as desired due to the dangerous circumstances. This led to vandalism occurring on the premises. Later, when security was further reduced, such occurrences of vandalism naturally intensified. Within five years after the collapse, every single apartment was stripped of its contents. The court held that this consequence was a foreseeable one and therefore MPAJ as well as other defendants who contributed to it could not avoid liability for this claim.

The learned judge also held that MPAJ was an unreasonable user of land by failing to maintain the East Stream after the collapse of Block 1. It was foreseeable that such a failure could cause damage to the plaintiffs. Thus MPAJ was also found liable for nuisance.

Did these liabilities then come under the purview of s 95(2) of the SDBA? Yes, and no. The High Court held that even though the maintenance of the East Stream, which was part of MPAJ's statutory responsibility under the SDBA, fell within the ambit of s 95(2) of the SDBA, via the part where it says "arising out of any building or other works carried out in accordance with the provision of this Act",[12] the immunity provided by the said section stopped once construction was completed. This was because there was no longer any "building or other work being carried out in accordance with the provision of this Act". Thus any liability incurred after this period was by s 95(2). The significant period of time concerned here in this case was after the collapse of Block 1.

MPAJ was found 15% liable to the plaintiffs by the High Court for post-collapse liability.

[12] Under ss 53 and 54 of the SDBA the local authority has a duty to maintain watercourses within its jurisdiction. Watercourses were held in *Azizah Zainal Abidin & Ors v Dato Bandar Kuala Lumpur* [1995] 5 CLJ 565 as including streams and rivers.

XI. Appeal to the Court of Appeal

MPAJ had appealed to the Court of Appeal in respect of the 15% apportionment for post-collapse liability. The learned judges of the Court of Appeal held that the duty owed by a public authority must be expressed in public law and not private law. Similarly, proceedings against a public authority for failure in performing its duty must be by way of an application for judicial review and not by way of private proceedings. Thus the Court of Appeal set aside the High Court's decision as to the post-collapse liability of MPAJ.

XII. The plaintiffs' cross-appeal to the Court of Appeal

The plaintiffs' cross-appeal was in relation to the pre-collapse liability of the local authority which was held by the High Court to have been excluded by s 95(2) of SDBA 1974. The Court of Appeal held that the act of the local authority in requiring the diversion of the East Stream did not fall within "inspection or approval of building or other works or the plans thereof" in s 95(2).[13] Thus the local authority was not entitled to the immunity provided by s 95(2). The Court also agreed that there was a common law duty of care owed by local authorities.[14]

However, this duty may be negated by express provision in the same statute under which powers are vested in the local authority. The same statute which empowers may also provide immunity. This was dealt with by the High Court[15] but apparently not by the Court of Appeal.

The other curious matter is the finding of liability by the Court of Appeal with regards to the pre-collapse liability. As mentioned above, the Court allowed the appeal of the local authority regarding their post-collapse liability on the basis that any duty owed by a public authority

[13] *Supra*, n 2 at p 592.

[14] *Fisher v Ruislip-Northwood UDC* [1945] 2 All ER 458 at p 462.

[15] *Supra*, n 1 at pp 3637-3639.

must be expressed in public law and not private law. The Court also said that proceedings against a public authority for failure in performing its duty must be by way of an application for judicial review and not by way of private proceedings. If this is the case, then by default the pre-collapse liability issue would also be redundant. Notwithstanding this, the Court of Appeal held MPAJ liable for the pre-collapse liability, holding them liable for the 15% portion of the liability to the plaintiffs.

One other interesting point to note is that the basis on which the Court of Appeal decided the pre-collapse liability was the second limb of s 95(2) of the SDBA *ie* "inspection and approval", whereas the High Court relied on the first limb of the section *viz* "building or other works carried out in accordance with the provision of this Act". Again, this was not dealt with by the Court of Appeal. This causes a certain level of confusion.

The question that now arises is, if it did not fall under the second limb, would it, anyway, get caught by the first limb, as was held by the High Court? Technically, looking at the connectors used in the section, it is disjunctive. Therefore the answer is that it could, unless it was held not to be caught as such. But the Court of Appeal did not exclude it. So this leaves open the question whether the trial judge had rightly decided the issue. What did the Federal Court have to say about this?

XIII. The Federal Court's decision

The decision of the Federal Court was that the pre-collapse liability of the local authority did come under the purview of s 95(2). Thus it was immune from liability towards the plaintiffs as far as pre-collapse liability was concerned. The reason for this however, according to Steve Shim CJ (Sabah & Sarawak), one of the learned judges, is that the pre-collapse liability of the local authority related to proper maintenance of the diversion of the East Stream. Therefore this came under "approval and inspection" which stemmed from the second limb of the section. The learned CJ held that the finding of the learned trial judge in effect

related essentially to this.[16] However, from the discussion above, it is humbly submitted that the learned trial judge had failed to consider the second limb of the section when he decided on the pre-collapse liability of the local authority. The learned trial judge decided this on the basis of the first limb. So again the question is, was the trial judge then wrong in applying the first limb of the section? This was left open by the Federal Court.

It was the Court of Appeal that decided on the basis of the second limb. The Federal Court actually based its decision on the second and third limb.[17] One might argue that it did not really matter – as long as the immunity was conferred on them from the same section, what difference would it make whether it was from the same or different limb? The answer to that is, in this particular case, it would have made a difference because the decisions had been overturned twice turning on exactly this point of distinction between the limbs in the section. Therefore, it did matter. At the very least, it is important for the sake of clarity as to the real purport of different limbs of s 95(2) of the SDBA.

One other matter that was not dealt with by any of the Highland Towers' decisions above was the interpretation of the third and final limb of s 95(2). This limb states that the local authority has no obligation even to inspect buildings and building works to ensure that they comply with the Act. The question postulated is, what then *is* the obligation of the local authority in relation to buildings and building works? The answer to that question could be the backbone to most, if not all, of the answers to the questions surrounding the outcome of this case. It is very important to decide very clearly from the outset whether the local authority is or is not the body which is responsible for the inspection of, and to be satisfied with, the safety and maintenance of the building and building works. If it is, it has to carry out these responsibilities and be accountable for them for the sake of the safety of human lives and perhaps also to a certain extent, investments, before issuing a Certificate of Fitness for the building. If not, for what-

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[16] *Supra*, n 3.

[17] *Ibid* at p 405.

ever reason, then this also has to be made clear so that some other measures could be taken to ensure that there is some mechanism for inspection. Otherwise, this will leave a loop-hole which creates danger to social and economic interests.

As to the post-collapse liability, the dissenting judgment in the Federal Court decision actually allowed the claim of the plaintiffs on the basis of a number of reasons. Steve Shim CJ (Sabah & Sarawak) held that:

> Quite obviously, there was a failure on the part of MPAJ to formulate and implement the promised master drainage plan. This persisted at the time of the trial before the learned trial judge. Certainly no settlement agreement was in sight at the material time. Not surprisingly, the learned trial judge found negligence on the part of MPAJ. Given the factual circumstances, I tend to agree with him. In my view, MPAJ could not seek shelter in s 95(2) of Act 133 because this is a case of negligence in failing to formulate and implement certain works or plans and not negligence in carrying out those works or plans. There was an assumption of responsibility by MPAJ to do what it had promised to do. The respondents alleged that its failure to do so had exposed MPAJ to liability for negligence. The negligence involved a complete absence or failure of works or plans to be done or effected and not with the manner in which the works or plans were being carried out or with the approval and inspection of those works or plans which would have immunized MPAJ from liability for negligence under s 95(2) aforesaid.
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> The failure by MPAJ to formulate and implement the master drainage plan had resulted in damages incurred by the respondents who had to evacuate their apartments in Blocks 2 and 3. The elements of forseeability and proximity are clearly discernible from the established facts. Moreover, I do not think it would be in the public interest that a local authority such as MPAJ should be allowed to disclaim liability for negligence committed beyond the expansive shelter of s 95(2) or other relevant provisions of Act 133 nor would it be fair, just and reasonable to deprive the respondents of their rightful claims under the law.[18]

[18] *Supra*, n 3 at p 412.

First, the learned CJ held that there was an assumption of responsibility by MPAJ of certain things promised to the respondents. This appears to be similar to the concept of voluntary assumption or undertaking of responsibility. Secondly, there was an absence or failure to formulate and implement works or plans to be carried out. It was not negligence in the manner in which the works or plans were being carried out, or in the approval and inspection of those works or plans. This is thus concerned with the principle applicable in cases of omissions in the performance of voluntarily assumed responsibilities. Thirdly, the learned CJ relied on concepts such as forseeability, proximity, and what is fair, just and reasonable. In short, the combination of these three aspects indicate that there seems to be emerging here a pattern similar to that of the approach used by the courts in the United Kingdom to extend the principle of *Hedley Byrne* to cases of professional liability which may encompass both negligent statements and acts, including whether caused by a positive act or omission, on the basis of a voluntary assumption of responsibility.[19] This approach would go a long way in serving a well deserved public purpose.

However, the majority decision favoured the defendant on the basis of policy rather than of any application of s 95(2). The reason given was that the local authority was already burdened by a whole scheme of responsibilities towards the people in their jurisdiction under their care and their limited resources require them to have to prioritise between doing their job and paying compensation to those who, compared to the majority of occupants within the jurisdiction, are much better off in terms of economic welfare and thus better able to take care of themselves. This may be seen to be arbitrary by some, but it may also be taken as an indication to the local authority that "the money is for you to do your job, so do it please".

[19] *Henderson v Merrett Syndicates Ltd* [1994] 3 All ER 506, *Spring v Guardian Assurance plc* [1994] 3 WLR 354, *White v Jones* [1995] 1 All ER 691, *Williams v Natural Life Health Foods Ltd* [1998] 2 All ER 577, HL.

XIV. Concluding Observations and Remarks

It is submitted that s 95(2) of the SDBA in fact appears to be open to other "people friendly" interpretations, which the courts may have occasion to take up for consideration at some future time. It may be said for now that the blanket immunity for the local authority, granted indiscriminately, may not be worthwhile, as it does not serve any societal purpose. The local authority may not be allowed the immunity in all cases irrespective of the nature of its default and the nature of the loss caused thereby. The test of foreseeability, as applied by the Court of Appeal and approved by the Federal Court, is a simple but purposeful test for imposing liability without discriminating between the physical loss and pecuniary loss, and without falling into the pitfalls of economic loss, which have been created under an alien system and may not suit the local conditions. This would also rid the law of all the confusion created by the concept of economic loss and its disallowance in tort. This approach is supported by the English cases including *Caparo Industries Plc v Dickman*,[20] the Australian cases including *Perre & Ors v Apand Pty Ltd*,[21] the New Zealand cases including *South Specific Mfg Co Ltd v New Zealand Security Consultants & Investigations Ltd*,[22] and the Singapore cases including *RSP Architects, Planners & Engineers & Anor v Ocean Front Pte Ltd*[23] and *Man B and W Diesel SE Asia v PT Bumi International Tankers*.[24]

Furthermore granting blanket immunity to the local authority in all its cases of negligence may inculcate a sense of complacency and indifference among its functionaries, which is not a healthy trend by any standards.

It is believed that the decision concerning the Highland Towers case is the only instance where s 95(2) of the SDBA was ever re-

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[20] [1990] 1 All ER 568.

[21] (1999) 73 ALJR 1190, 198 CLR 180.

[22] [1992] 2 NZLR 282.

[23] [1996] 1 SLR 113.

[24] [2004] 2 SLR 300.

sorted to from the time of its creation in 1974. This could probably be due to the fact that the presence of mind to successfully litigate for pure economic loss caused by negligent acts in Malaysia was only initiated within the last decade.[25] Before that, it was always thought that pure economic loss caused by negligent acts was always irrecoverable[26] and therefore not worth pursuing against private persons, and what more, public authorities. Because of this, the water remains largely untested, and questions remain unanswered *eg* were the courts' interpretations correct and what are other further interpretations that could be made of the said section? Perhaps if there are others who are brave enough to challenge the validity of the current interpretation, this section could still hope to see the light of day in future cases.

[25] *Dr Abdul Hamid Abdul Rashid & Anor v Jurusan Malaysian Consultants & Ors* [1997] 3 MLJ 546.

[26] *Murphy v Brentwood District Council* [1990] 2 All ER 908.

List of Legislation

The following list of Laws passed in Malaysia is a continuation of the list contained in (2005) 32 *JMCL*.

FEDERAL ACTS

Bil Akta Act No	Tajuk Ringkas Short Title
644	Akta Kewangan 2005 Finance Act 2005
645	Akta Warisan Kebangsaan 2005 National Heritage Act 2005
646	Akta Timbang Tara 2005 Arbitration Act 2005
647	Animals Act 1953 (Revised 2006)
648	Loan (Local) Act 1957 (Revised 2006)
649	Government Loans (Notice of Trusts) Act 1947 (Revised 2006)
650	Loan (Local) Act 1961 (Revised 2006)
651	Akta Lembaga Promosi Kesihatan Malaysia 2006 Malaysian Health Promotion Board Act 2006
652	Akta Pembangunan Kemahiran Kebangsaan 2006 National Skills Development Act 2006