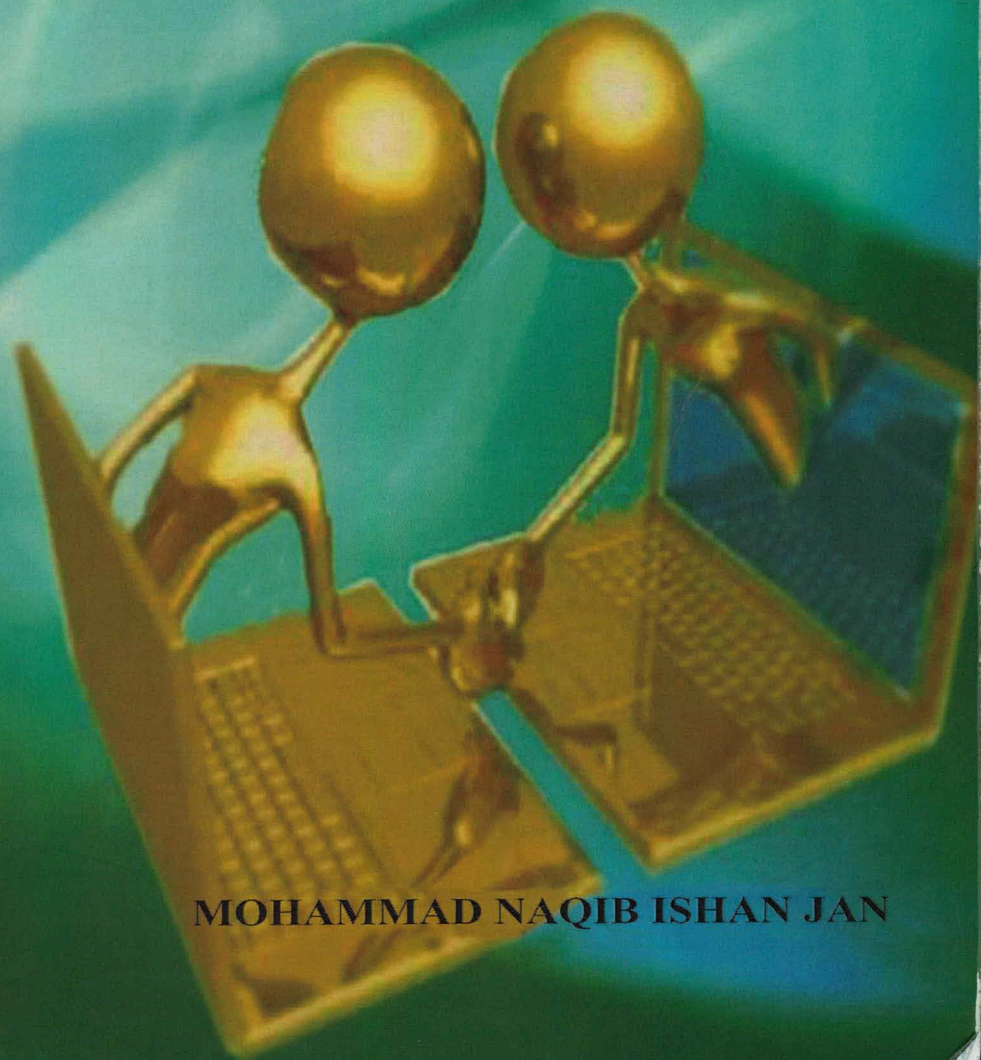


# **LAW AND COMMERCE : THE MALAYSIAN PERSPECTIVE**



**MOHAMMAD NAQIB ISHAN JAN**

# **LAW AND COMMERCE: THE MALAYSIAN PERSPECTIVE**

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## CHAPTER 26

# THE TORT OF NEGLIGENCE

*by*

MOHD. AKRAM BIN SHAIR MOHAMED\*

Negligence is probably the most important of all torts, affecting many areas of life. It gives rights to persons who have suffered damage to themselves or to their property, against a party who has failed to take reasonable care for those persons' safety. Negligence is the commonest tort claim and is relevant to the whole range of accidental injury situations such as road accidents, illness and injuries cause by workplace conditions and harm arising through medical treatment. It also plays an important part in product liability. A person who suffers damage due to defects in a product, caused by carelessness of the manufacturer or other party responsible for the state of the goods, may have a right to sue in negligence.

To succeed in a tort of negligence the plaintiff must, on a balance of probability, prove three elements:

- 1) That the defendant owed him a duty of care;
- 2) That the defendant failed to perform that duty, i.e. he breached his duty of care and
- 3) That the plaintiff suffered damage as the result.