

**IMPLICATION OF COLLATERAL WARRANTIES ON ARCHITECTS IN
TERMS OF PROFESSIONALISM, LEGAL, AND ECONOMY.**

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I declare that this thesis entitled “Implication of Collateral Warranties on Architects In Term of Professionalism, Legal and Economic” is the result of my own research except as cited in the references. The thesis has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.

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ABSTRACT

Collateral Warranties are contractual agreements between parties who otherwise might not be in a contractual arrangement. In the case of an Architect it is unlikely he will have a contractual relationship with purchaser, tenant and funder of the constructed building. Therefore the purpose of Collateral Warranty is to create contractual relationship between the Architect and these parties. Particular issue are raised in relation to clauses dealing with "*reasonable skill and care*". What does this phrase mean and how does a judge, decide whether this standard has been achieved? The objective of this research is to determine the implication of Collateral Warranty on Architects and look into the circumstances in which the Architect is either liable or not towards those defects in performing his duty. This research will be limited to cases in Malaysia, United Kingdom and United States of America, regarding detailed provision of variation clauses in relation to 'collateral warranties' and Architects in 'exercise reasonable skill and care' in the most commonly used standard forms of contracts, i.e. PAM 2006 Form, PWD 203A (Rev. 10/83), RIBA CE/99, SFA/99, JCT and provision under Common Law. Finding from this research, Architect can be pursued by parties other than his client in Collateral Warranty. At the same time, Architect will under no circumstances have a greater liability to the third party than he already owes to the client. The use of phrase such as 'utmost skill and care' and 'highest degree of skill and care' do not tend to add to the Architect's obligation, as the benchmark by which his performance to be judge is the exercise of such reasonable skill and care as would be exercise by a reasonably competent member of his profession. When the Architect is asked to provide collateral warranty, he is entitled to additional fees calculated on a time basis. Architect is also not liable to gives warranty on "*fitness for purpose*" as his obligation is to provide adequate advice in his profession to ensure client's interest is achieved.

ABSTRAK

Kontrak Kolateral merupakan sebuah persetujuan antara pihak yang pada kebiasaannya tidak akan terbabit dalam sesebuah kontrak pembinaan. Arkitek kebiasaannya tidak mempunyai sebarang kontrak dengan pembeli, penyewa dan pembiaya pembinaan sesebuah bangunan. Oleh itu, Kontrak Kolateral terhasil bagi mewujudkan perjanjian kontrak antara Arkitek dengan pihak-pihak tersebut. Isu timbul berkenaan penggunaan ungkapan "*kemahiran dan tanggungjawab yang munasabah*". Apakah yang dimaksudkan oleh ungkapan ini dan bagaimanakah sistem perundangan menetapkan bahawa standard ini telah dicapai? Objektif kajian ini dilaksanakan untuk mengenalpasti implikasi Kontrak Kolateral ke atas Arkitek serta menganalisis situasi samada perkara tersebut adalah tanggungan liabiliti atau sebaliknya dalam skop tugasnya. Skop kajian bertumpu kepada kes-kes di Malaysia, United Kingdom dan Amerika Syarikat. Ia juga merangkumi penggunaan pelbagai klausa berhubung dengan 'kontrak kolateral' dan Arkitek 'melaksanakan tugas dengan kemahiran dan tanggungjawab' yang tertakluk dalam kontrak-kontrak seperti PAM 2006 Form, PWD 203A (Rev. 10/83), RIBA CE/99, SFA/99, JCT serta Undang-undang Inggeris. Dari kajian yang dilakukan, boleh disimpulkan bahawa fungsi kewujudan Kontrak Kolateral adalah untuk merangkaikan ikatan perundangan dan membantu pihak ketiga untuk mengambilkan tindakan undang-undang secara langsung kepada Arkitek sekiranya berlaku kecacatan pada bangunan. Pada masa yang sama, liabiliti Arkitek kepada pihak terbabit adalah setara dan tidak lebih dari liabiliti Arkitek kepada pelanggannya dalam kontrak pembinaan. Apabila Arkitek diminta untuk menandatangani Kontrak Kolateral, beliau berhak untuk menuntut bayaran bagi liabiliti tambahan terbabit. Arkitek juga tidak bertanggungjawab untuk memberikan jaminan "*memenuhi tujuan*" kerana tugas profession ini adalah untuk menyediakan khidmat nasihat bagi memastikan kehendak pelanggannya tercapai.