



COVID-19: DON'T GET INFECTED AND SUFFERED FOR FREE. SUE THE INFECTOR AND CLAIM YOUR DAMAGES!

Introduction

Malaysians were frustrated about the news on several individuals' failure to disclose vital information related to COVID-19 to the relevant authorities during medical examinations.

One case is a lady who was admitted to the hospital in Kedah for delivery failed to make full disclosure of her COVID-19 status. After giving birth, she developed a fever. She was later found out to live with a family member who had attended an event in Sri Petaling Mosque and had tested positive for COVID-19.[1]

Another case is a patient in a medical centre in Melaka who failed to disclose his contact with a COVID-19 positive colleague linked to a gathering in Sri Petaling Mosque.[2] The medical centre was then shut down for two days for full disinfection. Obviously, this could have been avoided.

It does not stop there, there were other incidents where some individuals failed to do the compulsory 14-days self-quarantine as per the guidelines issued by the relevant authorities[3]. One recent case is the patient who had been to Italy but did not disclose this information upon her return. She was asymptomatic and was believed to have ignored the 14-days quarantine order. This patient has caused 37 other infections, eventually leading to five deaths and one in critical condition, after failing to disclose past travel details accurately.[4]

As an immediate measure, on 26.3.2020, Science, Technology and Innovation Minister, Khairy Jamaluddin Abu Bakar announced the government will launch a smartphone application that will be able to track the contacts of COVID-19 patients in a bid to tackle the outbreak.[5]

Now, if in the course of you –

(a) failing to disclose vital information regarding possible exposure to COVID-19 during medical examinations; and/or

(b) failing to observe the compulsory 14-days self-quarantine,

you infected or transmitted COVID-19 to other persons, can you be sued?

The Duty of Care

The law is settled that a person should take reasonable care to avoid acts or omissions that he/she can reasonably foresee as likely to cause injury to other person. This is called the **Neighbour Principle**[6].

Who, then, in law, is your neighbour? As per Lord Atkins: *“The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being affected when I am directing my mind to the acts or omissions which are called in question.”*

Put simply this, if you are a ‘carrier’ of COVID-19, be it silent carrier or otherwise, other persons who can get infected by you, are simply your neighbour in the eyes of law and by them being your neighbour, you then owe them a duty of care[7]. By owing them a duty of care, you can be liable for any injury and/or damages resulted from you breaching your duty of care i.e you can be liable for any damages they suffered if they got infected by COVID-19 because of your failure to disclose such vital information regarding possible exposure to COVID-19 during medical examinations or because of your failure to observe the compulsory 14-days self-quarantine.

In furtherance to the above, we hasten to elaborate further that duty of care is held to exist when –

- (a) the damage is reasonably foreseeable;
- (b) there is a close and direct relationship of proximity between the plaintiff and defendant, and
- (c) it is fair, just and reasonable for the imposition of a duty of care.

According to the World Health Organization (“**WHO**”), COVID-19 is primarily transmitted between human through respiratory droplets which can occur through fomites in an environment around the infected person and other direct or indirect contact routes[8]. In simple words, COVID-19 is very infectious and contagious! In this regard, given the nature of the disease is as such, it cannot be disputed that the damages is something reasonably foreseeable and there will be close and direct relationship of proximity between two parties. Hence, a duty of care can easily be established.

Don't get infected and suffered for free. Sue the infector and claim back your losses and damages!

Duty of Care Owed to Medical Frontliners

In addition, in the situation where patient failed to disclose information of the possible exposure to COVID-19 to the medical frontliners, ***Bolam v Friern Hospital Management Committee***[9] and ***Bolitho v City & Hackney Health Authority***[10] established that there is a duty of care in a doctor and patient relationship. Moreover, by omitting information from a healthcare professional, a diagnosis may not be made or may be delayed. An omission to fully disclose relevant medical history may allow a healthcare professional to claim for damages.

In the case of ***Mackey v Greenview Hospital***[11], it was held that the patient was under a duty to exercise ordinary care for her own safety in giving her medical history. Hence, the Court found in favour of the doctors and held that since the medical practitioners operated without the knowledge of her heart disease, they could not be found negligent.

The above principles are relevant where patients are being untruthful to doctors regarding their travel history which involves possible exposure to COVID-19. Doctors will not be held negligent if he/she mistreated the patient due to the lack of information. In turn, the doctor may sue the patient for failure to disclose such information as patients do owe doctors duty of care.

Damages

The law is trite that damages can be awarded in respect of a tort or a case where there is a breach of duty of care and etc. The general aim of an award of damages is to put the injured party in the same position as he would have been in if the tort had not occurred.

Put simply this, once you got infected by COVID-19, –

(a) you will lose your ability to perform your daily course of business, you are unable to work, even from home;

(b) your movement will be very limited since you are bound to comply with the compulsory quarantine.

In this regard, any foreseeable damages suffered arising from the example above can be claimed in order to put you, as an injured party, in the same position if you were not infected by COVID-19.

Not Limited to Individuals, Even Corporate Victim Can Sue

A company is an artificial entity recognized by the law as a legal person that exists independently with rights and liability. As such, a company can sue in tort for damages in the same way an individual may sue.

Let's put it this way, if in the course of you –

(a) failing to disclose vital information regarding possible exposure to COVID-19 during medical examinations; and/or

(b) failing to observe the compulsory 14-days self-quarantine,

you infected or transmitted COVID-19 to a person who is working in Company A.

Company A, after one of its employees infected by COVID-19, was forced for a temporary close down to prevent any potential risks of COVID-19 to spread further. Obviously, Company A will suffer losses after not being able to run its normal course of business.

Again, any foreseeable damages suffered arising from the analogy above can be claimed in order to put Company A, as injured party, in the same position if Company A was not forced for a temporary close down to prevent any potential risks of COVID-19 to spread further.

Again, don't suffer for free. Sue and claim back your losses and damages!

The Immediate Measures Taken by Other Countries

In Singapore, its government threatened COVID-19 patients with jail or a fine of up to thousands of dollars if they failed to disclose to the health authorities their traveling history[12]. An infected Chinese couple was charged under Singapore Infectious Diseases Act for misleading health authorities by giving incorrect information about their travel history. The wife was also charged with an additional count of failing to quarantine herself after her husband had been tested positive for COVID-19. If they are convicted, they will face fines of up to 10,000 Singapore Dollars as well as six months in prison.

In the United Kingdom, its government passed Coronavirus Bill to allow police and immigration officials to arrest and detain people suspected of having COVID-19 and £1,000 fines for refusing tests.[13] The bill enables action in containing and slowing the virus by reducing unnecessary social contacts, for example through powers over events and gatherings, and strengthening the quarantine powers of police and immigration officers.

In China, citizens who lie about their past travel history could see a negative impact on their social credit score.[14] This new rule was initiated after a Chinese woman flew back from the US to Beijing and tested positive for COVID-19. She developed fever and cough before she flew back to China and allegedly took antipyretics before boarding her flight and hid her health condition from the flight attendants.

1. "Covid-19: Woman's failure to disclose lives with positive case leads to hospital closure" <<https://www.thestar.com.my/news/nation/2020/03/21/covid-19-woman039s-failure-to-disclose-she-lives-with-positive-case-leads-to-hospital-closure>>
2. "Private hospital in Melaka shuts down for two days after patient failed to disclose Covid-19 contact" <<https://www.thestar.com.my/news/nation/2020/03/23/private-hospital-in-melaka-shuts-down-for-two-days-after-patient-failed-to-disclose-covid-19-contact>>
3. "Guidelines for Malaysians overseas, foreigners in M'sia" <<https://www.nst.com.my/news/nation/2020/03/576609/guidelines-malaysians-overseas-foreigners-msia>>
4. "1 visitor to Italy caused 37 Covid-19 infections in M'sia, including 5 deaths" <<https://mothership.sg/2020/04/covid-19-malaysia-visitor-italy/>>
5. "Smartphone application to track contacts of Covid-19 patients" <<https://www.nst.com.my/news/nation/2020/03/578445/smartphone-app-track-contacts-covid-19-patients>>
6. Donoghue v Stevenson [1932] UKHL 100.
7. Caparo Industries Plc. v Dickman [1990] UKHL 2.
8. "Modes of transmission of virus causing COVID-19: Implications for IPC precaution recommendations" by World Health Organisation" <<https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>>
9. Bolam v Friern Hospital Management Committee [1957] 1 WLR 583.
10. Bolitho v City & Hackney Health Authority [1996] 4 All ER 771.
11. MacKey v Greenview Hospital, Inc. 587 S.W.2d 249 (1979).
12. "Singapore threatens coronavirus patients with jail or a hefty fine of up to £5,500 if they lie to officials about where they have been" <<https://www.dailymail.co.uk/health/article-8082211/Singapore-threatens-coronavirus-patients-jail-dont-tell-officials-been.html>>
13. "Police and health Officials to get power to detain under UK Coronavirus Bill" <<https://www.theguardian.com/world/2020/mar/19/coronavirus-suspects-may-be-detained-under-uk-emergency-powers>>
14. "Lying about coronavirus in Beijing now affects social credit scores" <<https://www.abacusnews.com/china-tech-city/lying-about-coronavirus-beijing-now-affects-social-credit-scores/article/3075487>>

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Important Information

Azmi & Associates has set up Azmilaw Task Force to look into all issues arising from COVID-19 and MCO. Clients are welcomed to contact their usual Partner who will bring their issues to Azmilaw Task Force for our further action.

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We hope the above discussion is of assistance to you and your company. If your company's operations or contractual obligations are affected by the COVID-19 outbreak, we are ready to assist you on any queries you have.

Corporate Communication
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