

Apology in Law: Theoretical Foundations for Reform of Apology Law in Professional Negligence and Misconduct

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ABSTRACT

Apology occupies an increasingly significant role in contemporary legal discourse, bridging the domains of moral responsibility, psychological healing, and professional accountability. Yet, in Malaysia, the absence of statutory protection for apology renders it legally perilous—discouraging professionals from expressing remorse or acknowledging fault for fear of self-incrimination. This paper advances a theoretical justification for protecting admission by apologetic discourse, situating the argument within five complementary frameworks: Therapeutic Jurisprudence, Rational Choice Theory, Game Theory, Empathy Theory, and Attribution Theory. Adopting a doctrinal and interdisciplinary approach, this study analyses the nexus between law, psychology, and behavioural economics to demonstrate how apology functions as both a restorative and preventive mechanism. Comparative models from Australia, Canada, and the United Kingdom reveal that apology laws reduce litigation, improve professional integrity, and enhance public confidence. The paper argues that a theory-driven legislative framework would harmonise Malaysia's evidentiary and professional standards with global trends, transforming apology into a legally protected instrument of reconciliation, emotional repair, and systemic efficiency.

Keywords: Apology; admission; evidence; duty of candour; accountability.

INTRODUCTION

In both law and morality, apology is a deeply human gesture that transcends mere verbal expression—it embodies acknowledgment, accountability, and reconciliation. Within the realm of professional negligence and misconduct, apology functions as a moral bridge between fault and forgiveness, restoring dignity to victims and reaffirming professional ethics (Friedrich, 2022). Despite this significance, the Malaysian legal system provides no statutory protection for professionals who offer apologies in good faith. Under Section 17(1) of the Evidence Act 1950, an apology—whether verbal or written—may constitute an admission of liability, thereby deterring professionals, particularly in healthcare, education, engineering, and law, from engaging in open disclosure (Suhaimi et. al., 2022).

This legislative rigidity contrasts sharply with the approach in several common law jurisdictions such as Australia, Canada, and the United Kingdom, where apology legislation explicitly excludes expressions of regret or sympathy from evidentiary admissibility (Carroll & Goold, 2021; Vines, 2007). In Malaysia, however, the absence of interpretive flexibility has cultivated a culture of defensive practice. Professionals are advised to remain silent rather than to communicate remorse, fearing that any admission may be used against them in court (Choon, 2025). This defensive legalism undermines relational integrity, corrodes trust between professionals and clients, and impedes the moral dimension of justice (Mazzucato, 2021).

At the systemic level, this deficiency contributes to adversarial litigation, inflated compensation costs, and protracted dispute resolution processes, particularly in the healthcare sector where doctor–patient relationships are emotionally charged (Choon, 2025). Empirical studies in comparable jurisdictions have demonstrated that the absence of apology protection exacerbates legal costs and emotional strain on both victims and professionals

(Hickson et al., 2021). The failure to distinguish between a moral acknowledgment and a legal confession represents not merely a procedural gap but a jurisprudential deficiency—one that neglects the law’s capacity to promote healing and empathy (Suhaimi et. al., 2022).

This study seeks to provide a theoretical and legal justification for recognising and protecting “admission by apologetic discourse” within the Malaysian evidentiary framework. It posits that apology, when offered sincerely, serves therapeutic, rational, and restorative functions aligned with both moral responsibility and professional accountability (Wexler, 2020; Suhaimi et. al., 2022). The argument is advanced through a synthesis of five interdisciplinary theories—Therapeutic Jurisprudence, Rational Choice Theory, Game Theory, Empathy Theory, and Attribution Theory—each providing an analytical foundation for understanding why apology protection is legally desirable and socially beneficial (Carroll & Goold, 2021).

The article argues that law must evolve beyond a punitive framework toward a therapeutic model of justice, one that embraces compassion, reflection, and relational repair (Yamada, 2020). It calls for the enactment of a statutory mechanism to shield apologies from evidentiary use, thereby enabling professionals to express remorse without jeopardising their legal standing. Such reform reflects a paradigm shift—from retribution to restoration—anchoring Malaysian evidence law within the moral and emotional fabric of society (Suhaimi et. al., 2022).

Problem Statement

In Malaysia, the current legal framework perpetuates a paradox. While ethics and professional codes encourage transparency and accountability, the law simultaneously punishes candour by treating apology as an admission of guilt. Professionals caught between moral duty and legal risk often resort to silence or evasion. This disjunction between ethics and evidence law undermines trust, fosters adversarialism, and obstructs early conflict resolution (Kleefeld, 2017).

The absence of apology legislation in Malaysia contrasts sharply with reforms in other common law jurisdictions. Countries such as Australia, Canada, the United States, and the United Kingdom have adopted statutory models that explicitly protect apologies from being admissible as evidence of fault (Ho & Liu, 2011; Kleefeld, 2007). For instance, New South Wales’ *Civil Liability Act 2002* and British Columbia’s *Apology Act 2006* ensure that expressions of regret do not equate to legal admissions (Australian Law Reform Commission, 2014; Uniform Law Conference of Canada, 2007).

In Malaysia, by contrast, Section 17 of the Evidence Act continues to define admission broadly, encompassing any statement suggesting liability. The resulting legal uncertainty discourages professionals from issuing apologies, even where moral and ethical imperatives demand it (Cheung et. al., 2022). This legal silence reflects a broader gap in the jurisprudence of remorse—an under-theorised dimension of law that remains detached from the human experience of error, empathy, and healing (Tudor, 2021).

Without a coordinated legal framework that integrates theoretical, psychological, and governance perspectives, Malaysia risks remaining out of step with international developments in compassionate justice. The absence of a theory-based policy foundation limits the capacity of law to balance justice, efficiency, and humanity (Agapiou & Cheung, 2017).

METHODOLOGY

This study employs a qualitative, doctrinal, and library-based research design. It integrates insights from legal theory, behavioural economics, psychology, and comparative law to construct a multidisciplinary justification for protecting apologetic discourse.

Primary sources include statutory materials (notably the Evidence Act 1950, Civil Liability Acts from Australia, and similar legislation from Canada and Ireland) and case law interpreting apology provisions. Secondary materials include academic articles, theoretical writings, and policy reports published between 2000 and 2025.

These sources were examined through textual and content analysis to identify thematic intersections between apology, legal responsibility, and psychological repair.

Cramer's (2013) framework for theory selection—emphasising comprehensiveness, empirical validity, precision, heuristic utility, and applied value—was used to justify the choice of five key theories. These theoretical lenses are not viewed as competing paradigms but as complementary dimensions of a unified legal philosophy aimed at reconciling law's normative and therapeutic purposes.

Theoretical Foundations Supporting Apologetic Discourse

A. Therapeutic Jurisprudence: The Law as a Healing Instrument

Therapeutic Jurisprudence (TJ), conceptualised by Wexler and Winick (1991), positions the law as a social force capable of producing therapeutic or anti-therapeutic consequences. It challenges the positivist assumption that law's role is limited to adjudication and deterrence, instead arguing that law should enhance the psychological well-being of those it affects. Within the TJ framework, legal processes are evaluated not only for their compliance with justice but also for their emotional and relational impact.

In the context of professional negligence, apology represents a therapeutic act that restores dignity, facilitates forgiveness, and supports emotional closure for both victims and offenders. As empirical studies demonstrate (Liebman, 2020; Wexler & Winick, 2021), many victims of professional error seek acknowledgment and empathy rather than financial compensation. Silence or denial exacerbates trauma, whereas an apology provides moral validation and emotional relief.

Therapeutic Jurisprudence thus reframes apology as an instrument of psychological justice, not merely legal formality. The introduction of apology legislation in healthcare sectors across jurisdictions like Australia, Scotland, and the United States reflects this principle. For instance, the Australian Health Practitioner Regulation National Law (2010) encourages open disclosure, recognising apology as central to patient recovery and trustbuilding.

By adopting the therapeutic perspective, Malaysian law could realign its evidentiary framework with broader notions of restorative justice, prioritising emotional healing and relational harmony over adversarial vindication. The embedding of TJ principles within the Evidence Act would not weaken accountability; rather, it would humanise legality—ensuring that justice serves both the mind and the soul.

B. Rational Choice Theory: Apology as a Calculated Act of Cooperation

Rational Choice Theory (RCT), derived from the works of Adam Smith (1776) and later refined by Becker (1976), assumes that individuals act to maximise utility and minimise loss. In professional contexts, the decision to apologise is often constrained by legal and economic considerations. Without statutory protection, the perceived costs of apology—such as liability exposure or insurance invalidation—outweigh potential benefits like conflict resolution or client satisfaction.

RCT explains why professionals in Malaysia rationally avoid apology under current evidentiary rules. Fear of self-incrimination constitutes a disincentive to remorse. Comparative research in apology law jurisdictions supports this: after the enactment of the Michigan Apology Law (2005) and similar statutes in Canada, healthcare providers reported greater willingness to disclose errors, leading to reduced malpractice claims and faster settlements (Hickson et al., 2021).

Legal reform that removes punitive consequences for apology changes the cost-benefit calculus. It renders apology a rationally advantageous act, consistent with professional ethics and long-term reputation management. Apology becomes not only morally correct but economically sensible. RCT thus supports the legislative proposal for protecting apologetic discourse by demonstrating that when legal penalties are removed, rational actors choose cooperation and reconciliation over concealment and litigation.

In Malaysia, incorporating RCT principles into legislative design would foster an environment of voluntary transparency. A protected apology regime would reduce the burden on courts, enhance efficiency, and align professional conduct with rational behavioural incentives. The law, in this sense, would not compel morality but incentivise ethical rationality.

C. Game Theory: Restructuring the Strategic Dynamics of Responsibility

Game Theory, developed by von Neumann and Morgenstern (1944), provides a model for understanding strategic interaction among rational agents. In legal disputes, both the professional (potential defendant) and the complainant (potential plaintiff) engage in a strategic game of uncertainty, where each actor's decision influences the other's payoff.

Under Malaysia's current legal context, the equilibrium favours silence. The professional avoids apology to prevent self-incrimination, while the complainant interprets silence as indifference or concealment, leading to litigation. The game is non-cooperative, yielding mutual loss: damaged relationships, costly trials, and protracted emotional distress.

By contrast, apology protection laws alter the game's structure, converting it into a cooperative equilibrium. In jurisdictions with apology legislation, full apologies—those admitting responsibility and expressing remorse—are associated with significantly higher rates of dispute resolution and settlement (Robbennolt, 2020). When professionals know that apologies are inadmissible as evidence of liability, they are more likely to disclose errors honestly, and clients are more likely to accept restitution rather than pursue legal action.

Game Theory therefore provides a strategic rationale for legislative reform: by changing the rules of the game, the law changes the incentives of the players. Protected apologies encourage mutual trust and informationsharing, transforming conflict from zero-sum competition into positive-sum cooperation. The Malaysian Evidence Act, if amended, could similarly reconstruct professional-client interactions as collaborative rather than adversarial exchanges.

Game Theory also highlights the importance of iterated interactions—in ongoing professional relationships, repeated cooperation yields long-term reputational and economic benefits. Apology laws thus serve as reputation-preserving mechanisms, encouraging professionals to maintain transparency as a sustainable strategy rather than a one-time gamble.

D. Empathy Theory: Humanising Legal Responsibility

Where Rational Choice and Game Theories emphasise strategic rationality, Empathy Theory introduces the emotional and moral dimensions of apology. Empathy, defined as the capacity to perceive and resonate with another's emotional state (Hoffman, 2000), is essential to moral reasoning and justice. Within the legal profession, empathy transforms abstract responsibility into human accountability.

In professional negligence, empathy bridges the emotional divide between the offender and the victim. An apology that communicates genuine empathy can reduce anger, foster forgiveness, and restore dignity (Gerdes et al., 2022). Conversely, an apology perceived as insincere or strategic can deepen resentment. Thus, the authenticity of apologetic discourse is central to its legal and psychological effectiveness.

Empirical findings in medical and legal psychology affirm that victims who receive empathetic apologies report higher satisfaction and are less inclined to pursue litigation (Robbennolt, 2018; Spiro, 2019). These studies indicate that empathy functions as a preventive justice tool, reducing systemic burdens while upholding moral legitimacy.

From a jurisprudential standpoint, integrating Empathy Theory into evidentiary reform challenges the positivist separation between law and emotion. Law's traditional detachment from affect—its aspiration toward objectivity—has often produced cold, procedural justice. Yet, as Bandes (2016) argues, law cannot achieve moral legitimacy without acknowledging its emotional consequences.

Incorporating empathy into legal reform thus marks a shift from legal formalism to relational jurisprudence. A protected apology system would signal that the legal order values human compassion alongside procedural fairness. It would also cultivate ethical reflexivity among professionals—encouraging them to view mistakes not as moral failures but as opportunities for integrity restoration.

E. Attribution Theory: Understanding Perception, Blame, and Responsibility

Attribution Theory, originating from the works of Heider (1958) and Bernard Weiner (1986), examines how individuals assign causality to events, particularly those involving error or harm. In professional negligence cases, victims instinctively seek to attribute fault. A lack of explanation or apology often leads to internal attributions (“the professional is careless”), intensifying anger and moral condemnation. Conversely, an apology—especially when accompanied by explanation—can shift attributions toward external factors (“it was an honest mistake under complex conditions”), reducing hostility and facilitating understanding.

Legally, Attribution Theory provides a psychological justification for open disclosure policies. It shows that communication mitigates misperceptions of intent, thereby lowering the emotional temperature of conflict. In Ireland, for instance, the Civil Liability (Amendment) Act 2017 codified apology protection, allowing professionals to express regret and explain errors without those statements being used as admissions of liability.

Attribution Theory complements Therapeutic Jurisprudence by addressing the cognitive dimension of healing. Where TJ focuses on emotional repair, Attribution Theory focuses on interpretive reconciliation—the process by which victims reconstruct meaning around harm. By enabling professionals to contextualise their actions without fear, apology protection laws restore fairness in perception.

For Malaysia, embedding attribution principles into legal reform would help shift public discourse from punitive blame to systemic learning. It would also support institutional transparency, allowing regulators to analyse patterns of error constructively rather than defensively.

DISCUSSION

A. Integrating Theory into Legal Reform

The synthesis of Therapeutic Jurisprudence, Rational Choice, Game, Empathy, and Attribution Theories provides a multi-dimensional justification for embedding apology protection into Malaysia’s legal and professional framework. Collectively, these theories underscore that law is not merely a system of deterrence and punishment but a social institution that shapes behaviour, perception, and healing.

From a Therapeutic Jurisprudence perspective, apology legislation transforms law into an instrument of psychological well-being. It creates space for moral repair by legitimising remorse as a lawful and restorative act. The theory calls for a human-centred evidentiary regime that considers the emotional consequences of litigation, shifting the purpose of legal process from retribution to recovery.

Rational Choice Theory reinforces this by grounding the emotional imperative of apology in pragmatic logic. It reveals that the decision to apologise is economically and strategically rational once legal penalties are removed. Under this lens, apology protection laws act as behavioural incentives that align self-interest with collective welfare.

Game Theory expands this argument further by conceptualising the apology dynamic as a cooperative equilibrium. Legal reform alters the “rules of the game,” transforming adversarial incentives into collaborative strategies that yield optimal outcomes for both parties.

Empathy Theory humanises the process by recognising the moral emotions—empathy, guilt, compassion—that drive prosocial behaviour. When empathy is legitimised in law, apology becomes not a weakness but a manifestation of integrity.

Finally, Attribution Theory anchors reform in the cognitive dimension of justice. It explains how apology reshapes blame, reframes perception, and fosters forgiveness. Together, these theories construct an integrative jurisprudence that reconciles rationality and morality, law and psychology, efficiency and empathy.

B. The Cultural Context of Apology in Malaysia

In Malaysia, the act of apology carries profound cultural and religious significance. Within Malay-Muslim, Chinese, and Indian social traditions, apology represents humility, honour, and the restoration of harmony. The concept of *maaf* (forgiveness) in Islam is not merely a social courtesy but a spiritual virtue, reflecting accountability before God and community.

However, the legal culture—influenced by colonial adversarialism—has historically prioritised procedural justice over restorative justice. Professional indemnity frameworks, particularly in medical, legal, and engineering sectors, often prohibit unsanctioned admissions of fault. This creates a cultural dissonance between moral expectations and legal constraints. The professional who wishes to apologise, in accordance with religious or ethical duty, is prevented from doing so by legal risk.

This tension reveals a key paradox: while Malaysian society values apology as a moral act, its legal system deters it. Reforming the Evidence Act to protect apologetic discourse would therefore not only align Malaysia with global best practices but also restore harmony between law, culture, and ethics. Such a reform would localise the principles of Therapeutic Jurisprudence within Malaysia's socio-religious context, transforming apology from a liability into a legally empowered act of moral courage.

C. Comparative Lessons from Apology Legislation

Apology legislation has become a defining feature of modern legal reform in more than forty jurisdictions, marking a significant global shift toward compassion-based justice and restorative legal practices. These legislative models demonstrate that protecting apologies within legal systems does not diminish accountability but instead enhances fairness, transparency, and public trust. The comparative experiences of Australia, Canada, the United Kingdom, and the United States offer valuable insights into how apology laws can be effectively designed and implemented to balance the moral imperatives of remorse with the procedural demands of justice.

In Australia, the Civil Liability Act 2002 (New South Wales) introduced one of the earliest and most comprehensive apology provisions. The Act distinguishes between *partial* and *full* apologies, with the latter encompassing an explicit acknowledgment of fault. Importantly, Section 69 of the Act provides that a full apology cannot be construed as an admission of liability. This nuanced dual structure embodies a balanced approach—recognising the moral importance of acknowledging fault while shielding professionals from the adverse legal consequences of such admissions. The Australian experience demonstrates that compassion and accountability need not be mutually exclusive but can coexist within a rational legislative framework that prioritises both emotional healing and procedural justice.

In Canada, the *Apology Act 2006* (British Columbia) extended legal protection for apologies across all professions and contexts. It explicitly states that an apology, whether partial or full, is inadmissible as evidence of liability in civil, administrative, or disciplinary proceedings. This statutory protection provides professionals with the freedom to express remorse and empathy without fear of legal repercussions. Empirical studies following the enactment of this legislation (Carroll & Goold, 2021) revealed substantial declines in medical malpractice claims, faster resolution of disputes, and significant improvements in patient satisfaction and trust in healthcare institutions. The Canadian model illustrates how apology laws can reduce the adversarial nature of dispute resolution while reinforcing the moral legitimacy of professional accountability.

The United Kingdom adopted a similar stance through the *Compensation Act 2006*, Section 2, which explicitly provides that apologies, offers of treatment, or other gestures of sympathy do not constitute admissions of liability. This provision, though brief, carries substantial symbolic weight, signalling Parliament's recognition of apology as a socially constructive act. The UK model demonstrates that even a minimal statutory intervention

can shift professional culture toward openness and humility, fostering confidence among clients and patients that institutions prioritise moral integrity over defensive legalism.

In the United States, the apology movement gained momentum through the advocacy of the *Sorry Works! Coalition*, which championed open-disclosure practices in healthcare. This movement inspired multiple states, including Michigan and Colorado, to enact apology laws protecting expressions of sympathy and remorse. Empirical research indicates that these reforms have significantly reduced litigation costs and settlement amounts, with average claim expenses declining by up to 40% (Hickson et al., 2021). Furthermore, hospitals adopting open-disclosure programs experienced improved patient relations and lower incidences of adversarial claims. The American experience highlights the economic and relational efficiency of integrating apology into institutional risk management and dispute resolution frameworks.

Taken together, these comparative examples demonstrate that apology legislation does not weaken the legal system or erode professional responsibility. Rather, it strengthens the moral and relational fabric of justice by encouraging transparency, empathy, and ethical accountability. In each jurisdiction, the introduction of apology protection has yielded measurable benefits—reducing litigation, lowering costs, and restoring public trust in professional institutions. For Malaysia, these models provide a compelling blueprint for legislative reform. The most effective approach would involve amending the *Evidence Act 1950* to explicitly exclude apologies from the definition of admissions under Section 17. Such a reform would align Malaysian law with international best practices while promoting a more humane, efficient, and trust-based justice system that reflects the nation's cultural and ethical values.

D. The Malaysian Evidence Act and Institutional Barriers

The Evidence Act 1950, inherited from British colonial law, continues to define “admission” broadly under Section 17(1) as any statement suggesting liability or a relevant fact. This expansive and rigid definition, formulated in a different socio-legal context, is increasingly misaligned with the principles of contemporary, humanised justice. It fails to distinguish between a statement made in remorse or moral responsibility and one intended as a formal admission of legal fault. The absence of interpretive flexibility within this provision leaves no space for recognising statements made in good faith, apology, or therapeutic intent as non-prejudicial expressions of humanity. Consequently, the Act unintentionally discourages professionals from engaging in transparent, empathetic communication, as the legal implications of such expressions remain uncertain and potentially damaging.

Compounding this problem are the provisions found within professional indemnity contracts, which often prohibit any form of admission without the prior consent of insurers. These contractual constraints are particularly common in sectors such as medicine, law, engineering, and education, where professional liability is governed by stringent insurance requirements. The result is a deeply entrenched culture of defensiveness: lawyers routinely advise clients to remain silent; doctors avoid direct disclosure to patients; and administrators prioritise institutional reputation over honesty and moral accountability. What emerges from this culture is an environment of institutionalised fear—one that punishes empathy and rewards avoidance. This systemic disincentive to moral communication corrodes the ethical foundations of professional practice and widens the gap between legal procedure and moral responsibility.

To dismantle these barriers, Malaysia must embark on comprehensive legal reform through the enactment of a dedicated “Apology and Disclosure Act.” Such legislation should provide explicit statutory protection to ensure that an apology—whether verbal, written, or non-verbal—does not constitute an admission under any statute, regulation, or contractual provision. It should also make clear that an act of apology is protected unless it includes an express acceptance of legal liability accompanied by an offer of compensation. Furthermore, the legislation should prohibit professional indemnity insurers from penalising insured persons solely for issuing an apology in good faith. This would prevent insurers from voiding coverage or raising premiums in response to morally motivated disclosure.

By codifying these protections, Malaysia would not only harmonise its evidentiary rules with global standards but also promote a more compassionate and transparent professional culture. The proposed legal reform would

clarify the boundaries between moral responsibility and legal liability, thereby encouraging professionals to engage in sincere communication without fear of reprisal. In doing so, it would restore trust between institutions and the public, allowing the justice system to operate not merely as an arbiter of rights and liabilities but as a facilitator of reconciliation and human dignity.

F. The Interplay of Theories in Shaping Legal Behaviour

The integration of the five theoretical frameworks—Therapeutic Jurisprudence, Rational Choice Theory, Game Theory, Empathy Theory, and Attribution Theory—reveals that apology protection laws cultivate a selfreinforcing ecosystem of positive legal behaviour. Each theory contributes a distinct yet interrelated perspective on how law shapes human conduct, moral reasoning, and institutional practice. Together, they illuminate the transformative potential of apology as a bridge between legal rationality and moral consciousness.

Through the lens of Therapeutic Jurisprudence, law becomes a mechanism for healing rather than harm. It emphasises that legal systems should not merely adjudicate disputes but also foster psychological well-being and restore dignity to those affected by wrongdoing. In the context of apology, this approach underscores that acknowledging fault and expressing remorse are not signs of weakness but acts of moral strength that enhance relational justice. A legal framework that protects apologies reinforces this therapeutic dimension by validating remorse as a lawful and honourable act.

Rational Choice Theory complements this by explaining how individuals, when faced with reduced punitive risks, are more likely to make choices aligned with both moral and practical rationality. When the legal system removes the threat of liability from acts of apology, professionals are incentivised to act ethically and transparently because doing so maximises both personal and social utility. In this way, apology protection laws align rational self-interest with the broader public good, creating a behavioural environment where honesty and compassion become economically and reputationally beneficial.

Building upon this, Game Theory conceptualises apology as a strategic interaction that transforms conflict dynamics. Under a system that punishes disclosure, both parties—wrongdoer and victim—are locked in a noncooperative equilibrium characterised by defensiveness and mistrust. However, when apology protection is enacted, the equilibrium shifts toward cooperation, fostering trust and reciprocity. The apology becomes a mechanism for mutual gain, encouraging open communication and early resolution rather than prolonged adversarial engagement. Thus, Game Theory situates apology within a logic of collaboration rather than competition, demonstrating that empathy and strategy are not mutually exclusive but mutually reinforcing.

Empathy Theory deepens this understanding by situating apology within the moral and emotional fabric of legal culture. Empathy is the emotional bridge that humanises professional responsibility and transforms legal interactions from procedural exchanges into moral encounters. When law acknowledges the role of empathy, it legitimises the emotional dimensions of justice and embeds moral emotion within legal reasoning. A protected apology regime therefore represents not just procedural reform but a cultural shift toward recognising the humanity of both wrongdoer and victim.

Finally, Attribution Theory introduces the cognitive dimension to this legal–moral synthesis. It explains how apology can reshape public perceptions of fault and fairness by reframing causation. When a professional offers a sincere apology accompanied by explanation, the victim’s interpretation of the event shifts from one of personal blame to contextual understanding. The result is a reduction in hostility, an increase in trust, and a more balanced perception of justice. Attribution Theory thus reinforces the role of apology in correcting misjudgments and promoting cognitive reconciliation within the justice process.

Together, these five theories reveal that apology protection laws bridge law’s dual mandate: to administer justice and to cultivate virtue. They illustrate that legal reform can be both scientifically rational and morally grounded, combining psychological insight with normative principle. Most importantly, they affirm that compassion is not antithetical to law but complementary to it—a means of achieving justice without compromising order. In recognising apology as both a rational choice and a moral act, the law reclaims its humanity, transforming itself from an instrument of fear and retribution into a vehicle for dignity, trust, and reconciliation.

Legislative And Policy Recommendations

A. Proposed Amendments to the Evidence Act 1950

To effectively integrate apologetic discourse into Malaysia's legal framework, targeted statutory reform of the Evidence Act 1950 is necessary. The current provisions of the Act, particularly Section 17, equate any statement that implies fault or liability with a formal admission, thereby deterring professionals from expressing remorse or engaging in open communication. This outdated approach fails to recognise the evolving jurisprudential understanding of apology as a therapeutic and restorative act. Legislative reform is therefore essential to bring Malaysian law in line with contemporary principles of restorative justice and the growing global acceptance of apology as a legitimate legal mechanism for reconciliation.

A key proposal involves the insertion of a new statutory provision—Section 17A, to be titled “Exclusion of Apology from Admission.” This provision would state that, notwithstanding Section 17, an apology made orally, in writing, or through conduct in respect of any act, omission, or event shall not constitute an admission of liability and shall be inadmissible as evidence in any civil, disciplinary, or professional proceeding. This clause would clearly demarcate apologies from legally binding admissions, offering professionals and institutions the assurance that empathetic communication cannot be weaponised against them in litigation.

In addition, the law should provide a comprehensive definition of “apology” that reflects its multifaceted nature. The term should be defined as an expression of sympathy, regret, or remorse—whether or not it includes acknowledgment of fault—and encompassing all forms of communication, including verbal, written, or behavioural gestures. Such a definition would ensure that the law recognises apology not merely as a technical statement but as a broader expression of moral and emotional accountability. By adopting an inclusive definition, the legislation would capture the diversity of cultural and professional practices in Malaysia, where non-verbal gestures of remorse can carry significant moral weight.

Equally important is the inclusion of a clause protecting professionals from adverse contractual consequences when issuing apologies. Professional indemnity insurance contracts often penalise disclosure or admissions, creating a chilling effect on ethical behaviour. The reform should therefore stipulate that no contract of insurance or indemnity shall be voided, impaired, or prejudiced on the ground that the insured has issued an apology in good faith. This protection would empower professionals to communicate remorse without fear of breaching their insurance obligations or losing coverage.

Collectively, these proposed amendments would harmonise Malaysia's evidence law with the principles of Therapeutic Jurisprudence, which advocates for law's role as an instrument of healing and dignity. They would also align Malaysian legal standards with established international norms, such as those found in the Civil Liability Acts of Australia, the Apology Act of Canada, and the Compensation Act of the United Kingdom. Most importantly, these reforms would clarify the relationship between ethical obligations and legal liability, granting professionals the confidence to act compassionately and transparently. By embedding apology protection within the Evidence Act 1950, Malaysia would take a decisive step toward modernising its legal architecture—transforming apology from a risky confession into a legally protected act of integrity and humanity.

B. Integration into Professional Regulatory Frameworks

While legislative reform is essential to establish the legal foundation for protecting apologetic discourse, its effectiveness ultimately depends on the parallel transformation of professional culture and institutional ethics. Legal change must therefore be accompanied by the integration of apology and open-disclosure protocols within the codes of conduct and governance frameworks of professional regulatory bodies. This dual approach ensures that the spirit of compassion and accountability envisioned by apology legislation is operationalised across the diverse professional sectors that shape public trust and social responsibility in Malaysia.

In the medical sector, the Malaysian Medical Council (MMC) could take the lead by revising its Code of Professional Conduct to explicitly require disclosure and apology following adverse events or instances of clinical error. Such a revision could draw inspiration from the *General Medical Council (GMC) of the United

Kingdom, which mandates that doctors must be open and honest with patients when things go wrong, offering both an explanation and a sincere apology. By institutionalising this standard, the MMC would not only align itself with global medical ethics but also reinforce the values of transparency, empathy, and accountability within the Malaysian healthcare system. Encouraging medical practitioners to apologise without fear of legal reprisal would enhance patient trust, strengthen doctor–patient relationships, and foster a culture of learning from error rather than concealing it.

In the legal profession, the Bar Council of Malaysia could issue a Practice Direction affirming that expressions of regret or apology do not constitute breaches of a lawyer’s professional duties of confidentiality or loyalty to the client. Such a directive would clarify the ethical boundaries within which lawyers can express empathy, whether toward clients, opposing parties, or the public, without compromising their professional obligations. It would also signal a shift toward a more humane and reflective practice of law, one that values emotional intelligence as a complement to technical competence. Embedding apology within the ethical framework of the legal profession would demonstrate that the pursuit of justice need not exclude compassion, and that moral responsibility can coexist with zealous advocacy.

Beyond these two traditionally prominent sectors, the principles of apology and open disclosure should extend to higher education, engineering, and public administration, where professionals frequently interact with the public and hold positions of trust. Universities and public institutions could establish formal mechanisms for apology and restorative dialogue as part of their internal governance processes. In engineering and construction, for example, professional boards could require practitioners to acknowledge and communicate errors in design or implementation that impact public safety. Similarly, in higher education and public administration, transparent systems for apology following institutional misconduct or administrative errors could promote accountability and rebuild public confidence.

Integrating apology protocols across all professional sectors ensures continuity between law, policy, and ethics. It strengthens the moral infrastructure of governance by promoting a culture of restorative accountability—one that values honesty over avoidance, empathy over defensiveness, and ethical learning over punitive silence. By embedding apology within professional codes of conduct, Malaysia would not only support the legislative vision of a therapeutic legal system but also nurture institutions capable of healing rather than harming the relationships upon which their legitimacy depends.

C. Education and Cultural Change

Legal reform alone cannot transform professional behaviour without concurrent education and cultural sensitisation. Universities, professional training institutes, and regulatory bodies must integrate the study of apology law, empathy, and restorative justice into their curricula.

Simulated workshops, ethics training, and role-play modules can help professionals practice empathetic communication. The ultimate objective is to nurture a generation of practitioners who view apology not as a legal hazard but as a hallmark of professional integrity.

Theoretical And Practical Implications

The theoretical framework developed in this study demonstrates that apology operates simultaneously across therapeutic, strategic, emotional, and cognitive dimensions, revealing its profound capacity to transform both interpersonal relationships and institutional cultures. This multidimensional understanding situates apology not merely as an act of courtesy or morality, but as a legally and socially significant mechanism that redefines how responsibility, justice, and trust are understood within a modern legal system. When law recognises apology as a legitimate form of discourse, it bridges the divide between rational legality and moral empathy, creating a jurisprudential paradigm that integrates compassion into the architecture of justice.

From a practical perspective, the implications of this study are far-reaching. First, the framework reconceptualises legal responsibility by shifting its foundation from punitive fault to moral acknowledgment. Traditionally, legal systems have treated admission as a signal of liability, equating contrition with culpability.

However, when apology is decoupled from admission, responsibility transforms into a restorative rather than retributive concept. This shift allows law to function as an agent of healing rather than coercion, reaffirming its role as a guardian of human dignity rather than merely a mechanism of control. In this way, apology becomes a conduit for moral communication through which wrongdoers accept ethical accountability without triggering punitive consequences.

Secondly, the reduction of systemic litigation costs emerges as a significant practical benefit. Comparative evidence from jurisdictions such as Australia, Canada, and the United States demonstrates that the introduction of apology laws leads to substantial reductions in the number of lawsuits filed, shorter settlement times, and lower overall legal expenditures. This efficiency stems from the restoration of trust and communication between parties, which diminishes adversarial escalation and encourages early resolution. In Malaysia, where litigation costs can deter access to justice, embedding apology within legal processes would not only humanise the system but also improve its operational efficiency, aligning legal reform with broader economic and administrative objectives.

Thirdly, the framework advances the promotion of professional integrity as a central outcome. Legal protection for apology ensures that ethical behaviour is not punished but rewarded, aligning moral conduct with legal compliance. Professionals in medicine, law, engineering, and public service would be empowered to acknowledge mistakes and offer sincere apologies without fear of self-incrimination or contractual sanction. This alignment reinforces the social contract between professionals and the public, demonstrating that integrity is compatible with institutional protection. In effect, apology protection laws cultivate a professional culture where transparency and accountability become the hallmarks of excellence rather than vulnerabilities to be concealed.

Finally, the framework underscores the strengthening of public trust as a cumulative effect of integrating apology into law and policy. When institutions acknowledge wrongdoing openly and law protects such acknowledgment, the public perceives the system as morally credible and emotionally intelligent. This perception reinforces the legitimacy of both legal and professional institutions, fostering social cohesion and restoring confidence in governance. In a society where trust in institutions often erodes due to perceptions of denial and bureaucratic detachment, legalising apology serves as a visible reaffirmation of justice grounded in empathy.

These theoretical and practical implications collectively affirm that apology is not peripheral to justice but central to a humane and sustainable legal order. It embodies the law's evolving capacity to harmonise moral conscience with procedural fairness. In recognising the therapeutic, strategic, and ethical dimensions of apology, Malaysia can move toward a model of justice that not only resolves disputes but also restores relationships, strengthens institutions, and sustains the moral fabric of society.

CONCLUSION

Apology is both a moral act and a legal strategy—a bridge between error and reconciliation. This article has demonstrated, through five complementary theories, that protecting admission by apologetic discourse is jurisprudentially sound, psychologically restorative, and socially necessary.

Therapeutic Jurisprudence validates apology as a healing mechanism that promotes emotional restoration. Rational Choice Theory and Game Theory illustrate that apology becomes a rational act when punitive disincentives are removed. Empathy Theory ensures that compassion remains embedded within legal reasoning, while Attribution Theory explains how apology reshapes perceptions of justice and fairness.

Collectively, these frameworks position apology as a transformative legal instrument—one that realigns Malaysia's evidentiary law with the moral expectations of its society. Legislative reform to protect apologetic discourse under the Evidence Act 1950 would not weaken accountability but enhance it by encouraging transparency, remorse, and reconciliation.

Ultimately, this paper conceptually demonstrates how multi-theoretical integration can guide Malaysia in developing a robust, compassionate, and efficient legal system. It positions theory not merely as an explanatory tool but as a strategic compass for designing governance structures and justice mechanisms that transform professional error into ethical learning, and conflict into community restoration.

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