

**MULTIPLE TEST: THE MALAYSIAN COURTS' APPROACH
IN DETERMINING SPECIAL RELATIONSHIP FOR THE
DOCTRINE OF VICARIOUS LIABILITY**

By

Rafiqah bt Abd Razak (2007144193)
Nor Adila bt Baharuddin (2007144497)
Noor Farazidah bt Ismail (2007144487)
Noorsaliza bt Amin Nudin (2007144495)
Sharifah Khalisha bt Syed Abdul Rahman (2007144203)

Submitted in Partial Fulfillment of the Requirements
for the Bachelor of Legal Studies (Hons)

**Universiti Teknologi MARA
Faculty of Law**

April 2010

The students/authors confirmed that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

Abstract

This research aims at looking at the reasons why Malaysian courts do not adopt the Multiple Test in deciding Special Relationship in the Doctrine of Vicarious Liability. The team of five members conducted this research as part of the requirement for a Degree in the Bachelor in Legal Studies (Hons.) programme in Universiti Teknologi Mara, Shah Alam in determining whether the Multiple Test is the most appropriate test to be used in determining the existence of Special Relationship in the Doctrine of Vicarious Liability. The five chapters of the research discuss the application of the Multiple Test by conducting case studies in The United Kingdom and Malaysia as to the application of the Multiple Test for Special Relationship in the Doctrine of Vicarious Liability. In most of the cases, it was found that the Multiple Test was only mentioned but was not used by the United Kingdom and Malaysian courts. The Multiple Test should be regarded as the best test as it incorporates with the Control Test and the Organisation Test to determine the existence of Special Relationship since the test will cover all types of employees.

TABLE OF CONTENTS

Acknowledgment	ii
Abstract	iii
Table of Contents	iv-v
List of Statutes and Cases	vi-vii

CHAPTER ONE: INTRODUCTION TO THE RESEARCH

1.0	Introduction	1
1.1	Background	1
	1.1.1 Special Relationship	3
	1.1.2 Course of Employment	4
	1.1.2.1 The Control Test	4
	1.1.2.2 The Business Integration Test	5
	1.1.2.3 The Multiple Test	6
	1.1.2.4 Application of English Law by Malaysian Courts	8
1.2	Problem Statement	11
1.3	Research Objectives	12
1.4	Research Methodology	13
1.5	Scope and Limitation	14
1.6	Significance of Study	15
1.7	Provisional Plan of the Paper	16
1.8	Conclusion	17

CHAPTER TWO: LITERATURE REVIEW

2.0	Introduction	18
2.1	The Multiple Test to Determine Special Relationship	20
2.2	Malaysian Courts' Approach on the Multiple Test	23
2.3	Conclusion	25

CHAPTER THREE: ENGLISH AND MALAYSIAN CASES THAT APPLIES THE MULTIPLE TEST

3.0	Introduction	27
3.1	Multiple Test in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497	28
	3.1.1 Application in English Cases	36
	3.1.2 Application in Malaysian Cases	46
3.2	Findings from the Cases	55
	3.2.1 English Cases	55
	3.2.2 Malaysian Cases	57
3.3	Conclusion	61

CHAPTER FOUR: SEMI-STRUCTURED INTERVIEWS

4.0	Introduction	62
4.1	Interview and Findings	62
	4.1.1 Associate Professor Dr. Naemah Amin	62
	4.1.2 Puan Noraziah bt Abdul Jabar	64
4.2	Conclusion	69
	Appendix	
	- Appendix 1: Interview Questions	70

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.0	Introduction	77
5.1	Recommendations	77
5.2	Conclusion	79

	Bibliography	81
--	--------------	----

CHAPTER ONE: INTRODUCTION TO THE RESEARCH

1.0 INTRODUCTION

Doctrine of Vicarious Liability is a transfer of liability from a tortfeasor to another person who does not hold any duty incumbent to him¹. There are several requirements in determining the existence of vicarious liability which is the tortious act must be done in the course of employment and there must be a special relationship between the tortfeasor and another person who does not hold any duty incumbent to him. However, such requirements are not sufficient in determining vicarious liability therefore several tests need to be apply and due to that this research is carried out to look at which test is the right and appropriate test to apply in determining special relationship in the doctrine of Vicarious Liability.

1.1 BACKGROUND OF THE STUDY

The Doctrine of Vicarious Liability has been established as part of law of tort since about the year of 1700². In the field of literature and theology, the word vicarious gives the meaning “to signify something done by the hand of another”³. The word itself came from a Latin term interprets the meaning of “in the place of”⁴. Vicarious liability is the situation where a person i.e the employee who is not in breach of any duty incumbent in himself is liable for the tortious act done by someone else i.e the employer and such act is affecting the third party. The affected third party could succeed in putting liability on the person if he could prove that firstly; that the employer and employee are having an employer-employee relationship and secondly; that the tortious act was done

¹ W.V.H Rogers, *Winfield & Jolowichz on Tort* (Thomson: Sweet & Maxwell London 2006) p. 880.

² Glanville Williams and B.A. Hepple, *Foundations of the Law of Tort* (Butterworths London 2nd edn 1984) p. 89.

³ Note 1 at p. 132.

⁴ Glanville Williams and B.A. Hepple, *Foundations of the Law of Tort* (Butterworths London 2nd edn 1984) p. 89.