

## Abstract

Employer's liability for the torts of employees under section 425 of the Civil and commercial Code is a part of vicarious liability principle. The employer is liable when the employee acts in business in the execution of his/her duty according to a contract of service. This Thesis studies employer's liability for the torts of employees. Emphasizing in nature of employer and employee, scope of employment and a right of recourse against employee, then make a comparison between Thai laws and foreign laws such as French law, German law, English law and American law. Aiming to find an idea of the lawyers and the courts in different jurisdictions which will be helpful for improving, enforcing an interpreting the law in this area.

The thesis can be divided into 2 parts,

Part 1 : The Employer's Liability.

1. Sometimes it is difficult to tell whether employer and employee are in a contract of service or not. This problem occurs because the employer tries to get rid of his/her responsibility by denying that the employee is not the employee under a contract of service. This might be done by avoid doing a written contract or making a similar contract like a concession. In a running vehicle concession the Supreme Court normally ruled that the company owned a concession and the owner of the cars in the business are the employers, thus both are liable for the torts of employees. The study also found that in determining whether the contract is a contract of service or not, Thai court and foreign courts do not look at the name of the contract only, but consider surrounding circumstances also. The author agrees with the Supreme Court's approach since it is suitable and fair for all parties. However, it should be noted that the interpretation should not be too broad.

2. It is hard to specify the scope of “in the course of employment” as the law uses a broad term and the courts in each jurisdiction consider this matter differently. Furthermore, it also found that the term “in the course of employment” is interpreted broadly in order to find a wrongdoer. Hence, it should bear in mind that section 425 of the Civil and commercial Code is a specific provision which exempt the general provision as section 425 imposed vicarious liability. Also during the proceedings of the court, the court should use a suitable and justifiable interpretation to facilitate whether an act is in the course of the employment or not. If the employee acts for his/her personal benefit, it can not be regarded that the employee acts in the course of his/her employment. Hence, the employer is not liable.

#### Part 2 : The Right of Recourse against the Employee.

1. The question is dose the employers have right to the full recourse? The idea comes from the lawyers and some of the court’s rulings that the employer should not get the full recourse because in some case the damage might be occurred by employer’s fault. The study found that section 426 dose not provides the extent to the right of recourse of the employer. If the employers can not recourse in full amount, it will conflict with vicarious liability in section 425. In case that the employer has liability, an injured person can not sue the employer by using section 425 but he/she has to sue the employer to be responsible for fault liability in section 420 or section 432 depend upon the case. Consequently, to make the law clearer it should state that “The employer who has already pay a compensation to an injured person for the torts of the employee has the right to full recourse providing that the employer has no fault.”

2. In which case that the employer has a right to recourse against the employee? In other jurisdictions the court will grant a right to recourse only when the employee has acted intentionally or with gross negligence or in repetitious manner. In Germany the law states that the employer has a right to recourse only on those in potentially dangerous work. The author agrees with German’s approach that the

employer should take responsible in a risky business. In contrast section 426 dose not state any grounds on which the employer subjects to the right of recourse. The author would like to propose that section 426 paragraph 2 should be amend as follow, "Particularly those in potentially dangerous work, the employer shall have a right to recourse only when the employee has acted intentionally or with gross negligence."