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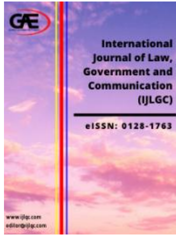

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# PASSENGERS' SAFETY IN E-HAILING SERVICES: LEGAL ACCOUNTABILITY OF PLATFORMS FOR DRIVERS' NEGLIGENCE

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**Abstract:**

The rapid expansion of Malaysia's e-hailing sector, dominated by platforms such as Grab and Uber, has intensified legal debates surrounding accountability for drivers' negligence and passengers' safety. While these platforms provide essential transportation services, incidents involving drivers' negligence often leave passengers struggling to seek redress against the platforms. The reason is because e-hailing platforms are not vicariously liable for their drivers' negligence. Therefore, this article investigates the legal accountability of the platforms in cases involving drivers' negligence, by focusing on the law of vicarious liability and the law in the Consumer Protection Act 1999 (CPA 1999) to assess whether these existing laws adequately protect passengers. Using a doctrinal legal research methodology, this study analyzes statutory provisions, case law, and comparative jurisdictions in the United Kingdom (UK) and New Zealand to evaluate the applicability of vicarious liability in negligence claims against e-hailing platforms. Findings indicate that Malaysia's current legal system lacks clarity of the issue due to lack of laws that specifically highlighting the matter. The article argues that legislative reforms are urgently needed to redefine e-hailing platforms' liability and to have a clear law on passengers' protection. Proposed solutions include amending the Employment Act 1955 and the Consumer Protection Act to explicitly cover e-hailing services. By closing this gap, Malaysia can better balance the e-hailing industry growth with equitable protections for passengers.

**Keywords:**

Vicarious Liability; E-hailing; Gig Economy; Negligence; Consumer Protection; Malaysia

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## Introduction

E-hailing, also known as electronic ride-hailing, is a digital service that allows users to book transportation instantly via mobile applications. It is part of gig economy, which is a broad labor market model where workers take on short-term, flexible jobs across different industries. This service has evolved beyond traditional car rides to include food delivery services to cater consumer needs. The growing popularity of e-hailing services is due to its convenience and efficiency, as providers deliver prompt service with just a few taps on a smartphone. Unlike conventional public transport, these platforms eliminate common hassles such as long waits, thus offering users a better experience (Sabar et al., 2023; Jamaluddin et al., 2021; Jais & Marzuki, 2020).

Malaysia's e-hailing industry begins in 2012 with the introduction of MyTeksi, which later rebranded as GrabTaxi. It was the country's first venture into app-based ride-hailing services (Manaf, 2022). In the beginning, the platform faced strong opposition from conventional taxi operators. Nevertheless, within a year of operation, it achieved remarkable development (Jais and Marzuki, 2020). E-hailing platforms operate not as conventional transport service providers, but as technology intermediaries that create digital marketplaces connecting passengers with independent drivers. These platforms allow contractual arrangements between passengers and drivers who utilize their personal vehicles to provide transportation services (Al-Shakhrit, 2021; Amirnuddin, 2017).

However, the application of e-hailing services has created some legal challenges (Rogers, 2016). The challenges include the liability of the e-hailing platforms in accident cases involving negligent drivers and whether passengers are protected under the consumer law in Malaysia. Under the law of tort principle, employer is vicariously liable for employee negligence occurring within employment scope. According to Aminurdin (2017), if a passenger is injured due to the negligence of e-hailing driver, the question of whether the platforms is vicariously liable depends on the driver's employment status. To determine this, we need to refer to the traditional vicarious liability principle, where an employer is liable for the negligent acts of an employee committed within the scope of employment. The problem is that the e-hailing platforms do not classify their drivers as employees, but merely independent contractors. Despite having operational control such as through management of fares and route monitoring, e-hailing platforms often disclaim liability by including independent contractor classifications in their service agreements (Koonse, 2021). Due to that, majority of the platforms argue that legal responsibilities including ensuring passengers safety are the duties of drivers themselves.

Besides, the legal framework in Malaysia fails to provide clear statutory guidance on this issue, resulting in uncertainty for all parties (Undari and Sugiyama, 2024). While existing laws such as the Consumer Protection Act 1999 provides general protections to passengers as consumers, the Act was not specifically drafted to address the problems faced by the gig economy model of e-hailing services. In addition, the courts in Malaysia as well are facing hardship in determining whether e-hailing platforms should be vicariously liable for drivers' negligence, particularly in accident cases involving passengers' injuries. In fact, cases decided in Malaysia offers no clear rulings on the issue. As a result, injured passengers often face hurdles in seeking compensation against the e-hailing platforms.

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Therefore, the article aims to examine the liability of e-hailing platforms in cases involving negligence of drivers, focusing on the gaps in the legal framework and consumer law in Malaysia. The article does not extend to other jurisdictions, though comparative references are made where relevant. Additionally, the article concentrates on passenger claims against e-hailing platforms and exclude other potential legal disputes such as contractual breaches between drivers and e-hailing platforms or third-party claims beyond passenger injuries. The first part of the article examines the common law principle of vicarious liability that is applicable to this issue, particularly the factors influencing vicarious liability determinations and analysing the liability of e-hailing platforms in negligence cases. By addressing this issue, this article contributes to the ongoing debate on adapting the traditional vicarious liability principle to negligent cases involving e-hailing platforms and determining whether injured passengers can claim compensation directly from e-hailing platforms or must rely on drivers' personal liability. While the second part of the article discusses the consumer protection law, focusing on the Consumer Protection Act 1999 (CPA 1999) to find the statutory gaps that can highlight the urgent need for legislative and regulatory reforms in Malaysia. Finally, the findings of the article propose measures like amending the existing laws to clearly cover the e-hailing services. This is essential in ensuring that Malaysia's legal framework keeps pace with technological advancements while safeguarding consumer rights.

## Literature Review

The rise of e-hailing services has transformed urban mobility, offering convenience and affordability to passengers. However, concerns about passengers' safety and legal accountability in cases of driver negligence remain unresolved in many jurisdictions, including Malaysia. This literature review examines existing research on gig economy, focusing on e-hailing services, the legal framework governing e-hailing services and the extent to which the e-hailing platforms can be held liable for drivers' misconduct.

### *Conceptual Framework*

The term gig economy refers to modern, technology-driven employment sectors characterized by short-term and flexible work arrangements. This concept emerged to describe a growing trend of young workers engaging in multiple freelance or temporary roles rather than traditional long-term employment (Fatoki et al, 2024). According to Rashid (2020), digital platforms and technologies have transformed the gig economy by acting as intermediaries that linking service providers with consumers. This development gives opportunities for individuals who struggle to have traditional full-time employment to get income. Similarly, Makhtar, Abd Ghadas, and Haque (2024) and De Stefano (2015) stated that platforms work is a type of employment where individuals carry out tasks or offer services via digital platforms or mobile apps in return for payment. These workers, often referred to as gig or platform workers, accounted for approximately 26% of Malaysia's total workforce in 2020. Gig workers can be categorized into two main groups which are service providers such as drivers, and delivery personnel and product sellers such as retailers. It also involves participants especially consumers who request services like transportation, independent workers, and digital platforms that connect both parties through the apps (Bajwa et al, 2018).

As a dominant force within the gig economy, the e-hailing platforms have generated substantial employment opportunities for countless individuals worldwide (Makelane and Mathekga, 2017). Jais and Marzuki (2020) defines e-hailing services as the concept revolves around multiple users sharing vehicles through digital platforms, obtaining on-demand transportation

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without the need for ownership. This system provides flexible, short-term access to transportation solutions that can be engaged easily.

The rise of platform workers and the gig economy in Malaysia, particularly in transport services, started in 2012 with the introduction of digital platforms like Grab and Uber in 2013 (Makhtar, Abd Ghadas, and Haque, 2024). A survey was conducted by Amirnuddin, Turner, and Kamarulzaman in 2017 to explore public perceptions of e-hailing services, focusing on GrabCar and Uber's taxi service in Malaysia. Respondents were surveyed about their usage frequency and among Uber users, 17.2% took rides two to three times weekly, 15.1% used it biweekly, 6.5% once a week, and 1.1% daily. The survey also examines reasons for using the Uber service. It indicates that respondents used the service primarily due to its convenience (82.2% agreed or strongly agreed), affordability (72.6%), and cost-effectiveness (72.6%). Like Uber, GrabCar was favored by users primarily for its convenience (60.5% agreed or strongly agreed).

***Legal Framework***

In early stages, e-hailing services existed competing with conventional taxis while operating outside existing transportation laws. Malaysia's primary regulatory frameworks at the time, the Commercial Vehicles Licensing Board Act 1987 (CVLBA) and Land Public Transport Act 2010 (LPTA) were tailored exclusively for traditional taxi services, leaving e-hailing platforms ungoverned. This gap caused significant problems between e-hailing providers and licensed taxi operators, with the latter contending that e-hailing services enjoyed advantages due to their unregulated status. Besides, e-hailing drivers were initially exempt from standard industry requirements such as obtaining Public Service Vehicle (PSV) licenses, adhering to fare controls, or meeting other regulatory obligations that applied to traditional taxi services (Jais and Marzuki, 2020; Amirnuddin, Turner, and Kamarulzaman, 2017).

In 2018, due to the taxi driver demonstrations and public safety considerations (Teo, 2018), the former Transport Minister announced regulatory reforms through three key legislative amendments as follows: (1) the Land Public Transport (Amendment) Act 2018; (2) the Commercial Vehicles Licensing Board (CVLB) Act 1987; and (3) the Road Transport (Amendment) Act 2020. These reforms established stringent operational requirements for e-hailing drivers, including mandatory annual PUSPAKOM vehicle inspections, medical and criminal background clearances, and PSV licensing. The regulations further mandated e-hailing-specific insurance coverage, SOCSO contributions, and installation of safety equipment in all vehicles (Manaf, 2022; Al-Shakhrit, 2021; Amirnuddin, Turner, and Kamarulzaman, 2017).

***The Extent to Which E-hailing Platforms Can Be Held Liable for Driver Negligence.***

Within the gig economy framework, majority of the workers operates as independent contractors rather than employees. It means that there are typically engage in short-term and flexible work arrangements that is facilitated by digital platforms, allowing them autonomy over their own schedules (Rashid, 2020). This principle is agreed by others. According to Fatoki et al, (2024), gig workers including e-hailing drivers are classified as independent contractors rather than employees, which excludes them from mandatory employer-provided benefits such as insurance. As a result, the e-hailing platforms are free from any liability.

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Similarly, Amirnuddin, Turner, and Kamarulzaman (2017) states that e-hailing platforms such as Uber and GrabCar maintain their function as intermediaries that connect drivers with passengers, not as employers. They assert that drivers bear full responsibility for maintaining proper vehicle insurance coverage and the primary accountability for passengers' safety rests with drivers. This allows the e-hailing platforms to avoid any obligations and shifts liabilities to their drivers.

In Malaysia, the current legal framework lacks clear provisions regarding vicarious liability application to ride-sharing companies. Thus, this legislative ambiguity presents an opportunity for regulatory intervention, whether through amendment of the existing laws, to establish transparent accountability standards to the e-hailing platforms (Amirnuddin, Turner, and Kamarulzaman, 2017).

**Research Methodology**

This study adopts a doctrinal legal research methodology, which involves the systematic analysis of legal principles, statutes, case law, and scholarly commentaries to address the research objectives. Few primary sources are examined particularly the CPA 1999 and case law from Malaysian courts involving negligence claims against e-hailing platforms, and negligent drivers. This provides insight into how courts interpret and apply these laws in Malaysia. In addition, the author refers to secondary sources, including a wide range of academic literature, legal commentaries, government reports, and relevant online resources. Comparative references to foreign jurisdictions such as New Zealand and the United Kingdom (UK) are made to assess how other legal systems regulate e-hailing liability.

By employing doctrinal legal research, this study systematically evaluates the liability of e-hailing platforms in Malaysia, identifies regulatory shortcomings, and proposes legal solutions. The absence of empirical methods is justified by the paper's focus on legal interpretation and reform, rather than statistical or behavioral analysis.

**Vicarious Liability: Its Concepts and Requirements**

Vicarious liability is a principle in the law of tort that holds one party responsible for the wrongful acts of another due to the existence of special relationship between them (Mohammed Naaim, 2023; Norchaya Talib, 2021; Tan, 2015). This principle is a key legal concept in establishing accountability within employer-employee relationships. Derived from common law, this principle has been integrated into Malaysian law through court cases. The rationale behind this principle is employers are better equipped to compensate the victims. Besides, since employers get benefits from their employees' work, they should also bear the associated risks and be held accountable for any harm or injuries caused by their employees (Mohammed Naaim, 2023).

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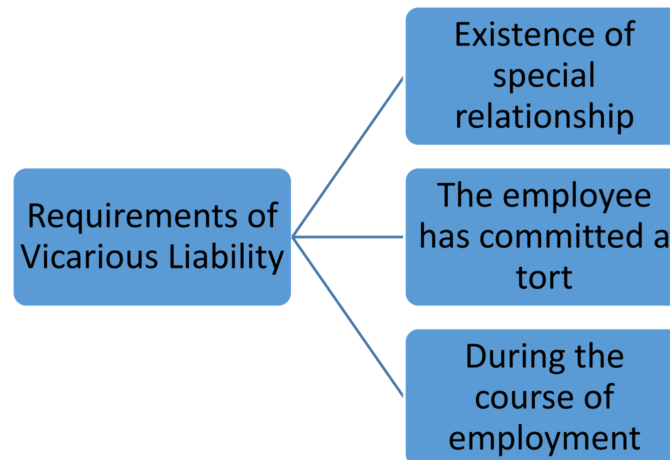


**Figure 1: Requirements of Vicarious Liability**

Figure 1 illustrate the requirement of vicarious liability. Under the common law, three essential requirements must be met to establish vicarious liability: (1) a specific relationship must exist between the parties, which is the relationship between employer and employee; (2) the employee must have committed a tort, which is a wrongful act that causes harm or injury; and (3) the tort must have occurred while the employee was acting within the scope of their employment (Mohammed Naaim, 2023; Norchaya Talib, 2021). The following are the discussion of all the requirements stated above.

***Existence of a Special Relationship***

Establishing vicarious liability requires proving a special relationship between the parties. This special relationship typically applies to an employer-employee or a principal-agent relationships, where the law holds the employer or the principal accountable for their subordinate's wrongful acts. Hence, there is a special relationship between employers and employees and the employer will be vicariously liable for the wrongful act committed by the employee, provided that other requirements are fulfilled. However, the law stated that an employer will not be vicariously liable for wrongful acts committed by independent contractors (Mohammed Naaim, 2023; Hewsen, 2022; Norchaya Talib, 2021). A case that illustrates this principle is the case of *Siow Ching Yee v Columbia Asia Sdn. Bhd.* [2024] 3 MLJ 66. The issue in this case was whether a private hospital liable for the actions of its independent contractor doctors, specifically in a situation where a patient suffered severe brain damage due to the negligence of a consultant anaesthetist. The court held that the law will only imposes liability on the defendant for the breach of duty towards the plaintiff, if there is a relationship of employment between the defendant and the tortfeasor.

In the case of *Tan Eng Siew & Anor v Dr. Jagjit Singh Sidhu & Anor* [2006] 5 CLJ 175, the plaintiffs, a husband and wife, brought an action against a medical practitioner (the first defendant) and a hospital (the second defendant) for the complications suffered from the wife's femur fracture treatment. The court analysed several key issues, including whether the hospital was vicariously liable for the doctor's actions, and if the doctor was negligent in his treatment. Ultimately, the court found the first defendant (the doctor) negligent due to delayed diagnosis and inappropriate treatment, holding him liable for damages to the second plaintiff (the wife), while dismissing all claims against the second defendant (the hospital). In this case, the court

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discussed the elements required to establish vicarious liability, specifically in relation to the relationship between the second defendant (the hospital) and the first defendant. The court dismissed the claim because the first defendant was a consultant with his own clients, had full control of the treatment, care and fees and merely using the second defendant's facilities by paying a percentage of his charges to clients to the second defendant. Therefore, the second defendant (the hospital) was not vicariously liable for the medical negligence committed by the first defendant (the doctor).

***Tort Committed by the Employee***

Another important requirement in proving vicarious liability is the plaintiff must prove that the employee committed a tort that causes harm to another party, whether through intentional or negligent conduct (Mohammed Naaim, 2023; Norchaya Talib, 2021). The tort or civil wrong here includes negligence, which is defined by Alderson B in the case of *Blyth v. Birmingham Waterworks Co.* (1856) 11 Exch 781 as follows: "… the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do; or doing something which a prudent and reasonable man would not do."

In Malaysian law, a successful negligence claim necessitates proof of three fundamental elements including the existence of a duty of care, breach of that duty, and causal connection between the breach and the harm suffered. In proving the existence of a duty of care in negligence cases, the Caparo three-stage test which is derived from *Caparo Industries plc v Dickman* [1990] 2 AC 605 case is the key test. The test requires the plaintiff to prove three things: (1) that the harm must be reasonably foreseeable; (2) the existence of relationship of proximity between parties; and (3) the imposition of liability on the defendant must be fair, just, and reasonable (Norchaya Talib, 2021). This test was affirmed in the Federal Court case of *Tenaga Nasional Malaysia v Batu Kemas Industri Sdn Bhd & Another appeal* [2018] 6 CLJ 683.

After proving the existence of a duty of care, the plaintiff needs to prove that there is a breach of that duty. In other words, there must be failure on the part of the defendant to act according to the standard of care required of him (*Donoghue v Stevenson* [1932] AC 562). The test is known as the reasonable man test. According to this test, the court will have to evaluate the conduct expected of a reasonable person in the same circumstances and determines whether the defendant could have reasonably foreseen the potential harm (Norchaya Talib, 2021).

Finally, causation is another requirement that must be established to hold a defendant liable of negligence. There are two main types of causation in tort law: factual causation and legal causation. Factual causation refers to the actual connection between the defendant's conduct and the harm suffered by the plaintiff. It focuses on the question of whether the defendant's action cause the plaintiff's injury (Norchaya Talib, 2021). In the case of *Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428, the court found that although the hospital breached its duty of care by failing to treat the patient, the negligence was not the factual cause of death. The patient would have died from arsenic poisoning regardless of the hospital's actions, meaning the failure to treat did not alter the outcome.

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Even when factual causation is proven, the defendant will only be held liable if the harm is not too remote (legal causation). In other words, the damage must have been a reasonably foreseeable consequence of the defendant's action. (Norchaya Talib, 2021). The case of *Overseas Tankship (UK) Ltd v Morts Dock (The Wagon Mound case)* [1961] AC 388 (commonly known as The Wagon Mound case) marked a significant shift in legal causation. It replaced the earlier direct consequences rule from *Re Polemis* [1921] 3 KB 560 with a test based on reasonable foreseeability.

***In the Course of Employment***

The last requirement in proving vicarious liability is the tort must have been committed in the course of employment. To assess this, courts will have to differentiate between employees and independent contractors. In other words, the court must determine whether a worker is an employee or an independent contractor. The rule is that employees typically work under the direction and control of the employers, while independent contractors carry out tasks autonomously. To make this distinction, courts may use tests such as the control test, which examines the level of supervision, or the integration test, which considers whether the work is an essential part of the employer's business (Mohammed Naaim, 2023; Hewsen, 2022; Norchaya Talib, 2021).

In addition to the control and integration tests, Malaysian courts also apply the close-connection test to determine whether the worker is an employee or an independent contractor. This approach was affirmed by the Federal Court in *GMP Kaisar Security (M) Sdn Bhd v Mohamad Amirul Amin Mohamed Amir* [2022] 6 MLJ 369. In this case, the Federal Court reaffirmed the close-connection test as the guiding principle for determining vicarious liability. Drawing from *Lister v Hesley Hall Ltd* [2002] AC 215, the test asks whether the employee's wrongful act was so closely linked to their duties that it would be fair to hold the employer responsible. The court emphasized that this modern approach replaces the outdated notion of employees acting on a 'frolic of their own' as seen in older cases like *Samin bin Hassan v Government of Malaysia* [1976] 2 MLJ 211. In GMP, the issue arose when an employee committed a tortious and criminal act using a weapon supplied by his employer, GMP. The High Court and Court of Appeal held GMP was liable, and the Federal Court upheld this decision, highlighting the evolving scope of vicarious liability in Malaysia. The case ultimately hinged on the application of the principle of vicarious liability in the context of an employer-employee relationship where the employee committed a tortious act, which was also a criminal act, using a weapon provided by the employer.

In *Top Strata Management Sdn Bhd v Perbadanan Pengurusan Bukit Desa Kondominium* [2024] MLJU 672, the High Court addressed the scope of vicarious liability in the context of employee's misconduct. The case involved an employee of Top Strata Management who fraudulently misappropriated over RM300,000 from the plaintiff, a condominium management corporation. Top Strata management argued that it should not be held liable for the employee's intentional wrongdoing. However, the court reaffirmed the principle that an employer can be held vicariously liable for an employee's negligent or intentional acts if those acts are sufficiently connected to the employee's job duties. Drawing on the close-connection test established in *GMP Kaisar Security*, the court found that the employee's access to financial documents and authority over funds were part of his role, and this connection made it fair to hold the employer accountable.

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**Legal Accountability of E-Hailing Platforms in Negligence Cases**

As Malaysia's e-hailing industry continues to expand, it faces legal scrutiny specially about the issue of e-hailing platforms liability in road accidents causing by negligent drivers. This issue remains unsettled under the Malaysian law. A tragic example highlighting this legal ambiguity occurred in 2019, when a Chinese national was killed in an e-hailing accident near Cyberjaya. The vehicle collided with a lamp post and road divider, resulting in the passenger's death at the scene while the driver sustained minor injuries (The New Straits Times, 2019). This incident highlights the urgent need for clearer legal frameworks to determine whether the e-hailing platforms should be vicariously liable for the negligent committed by the drivers. It also raises questions about the employment status of drivers, whether they are considered as independent contractors or employees.

Globally, e-hailing platforms have consistently limited their liability for the negligent acts of their drivers by classifying their drivers as independent contractors rather than employees. Those platforms claimed that they are merely intermediaries that connect passengers with drivers and therefore should not be directly responsible for the drivers' conduct. In countries like New Zealand, cases like *Arachchige v Rasier New Zealand Ltd & Uber BV* [2020] NZEmpC 230 supported this position that e-hailing drivers are independent contractors, and not workers. In this case, the claimant, who had driven for the e-hailing platform Uber in Auckland, sought recognition as an employee under the Employment Relations Act 2000 after being removed from the platform due to a customer complaint. To determine the nature of the working relationship, the court examined several factors as listed under Section 6(2) of the Act, including the terms of the service agreement, the level of control exercised by Uber, and whether the driver operated on his own account. After evaluating these elements, the court concluded that the claimant was running his own business independently and did not meet the legal definition of an employee. This decision reflects a broader global trend where courts often uphold the e-hailing drivers as independent contractors, reinforcing the platforms' position that they are not directly liable for drivers' actions under employment law.

In contrast to the above decision, the UK Supreme Court in *Uber BV and Others v Aslam and Others* [2021] UKSC 5, ruled that e-hailing drivers are legally considered employees. This landmark case focused on whether e-hailing drivers should be entitled to employment rights such as minimum wage and paid leave under the Employment Rights Act 1996, the National Minimum Wage Act 1998, and the Working Time Regulations 1998. The drivers argued that they were employees due to the control Uber exercised over their activities including setting fares and assigning rides. The Employment Tribunal found that drivers were working whenever the app was switched on and they were available for assignments. This view was upheld by the Employment Appeal Tribunal and the Court of Appeal and ultimately affirmed by the Supreme Court. This ruling showed that Uber's operational control over drivers affecting the court's decision in deciding whether the drivers are employee or not.

In Malaysia, there are very few reported court cases that directly address the issue of vicarious liability in the context of e-hailing drivers' negligence. Nonetheless, e-hailing platforms in Malaysia typically classify their drivers as independent contractors, rather than employees. In *Loh Guet Chin v Minister of Human Resource & Ors* [2022] MLJU 2503, the Malaysian High Court ruled that an e-hailing driver does not qualify as a workman or employee under Section 2 of the Industrial Relations Act 1967 (IRA 1967). This decision arose from a judicial review application filed by Loh Guet Ching, a former Grab driver, who claimed unfair dismissal after

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her account was suspended due to a passenger dispute. The court outlined several reasons for its decision including the absence of formal employment contract existed between Loh and Grab, Loh did not receive a fixed salary; instead, Grab took a 20% commission from the earnings and Loh had full autonomy over work, including when and how to use the app. The appellant brought an appeal to the Court of Appeal, challenging the High Court's decision in an unfair dismissal case. However, the Court of Appeal upheld the High Court's ruling and dismissed the appeal, reaffirming that a 'workman' refers to an individual engaged under a contract of service, which was not present in the appellant's situation (Anbalagan, 2023). Further appeal was made to the Federal Court which was also dismissed (Bernama, 2024).

The court in the *Loh Guet Chin* case referred to Section 2 of the IRA 1967. This Act is one of the key Malaysian labor laws designed to promote harmony and fairness in employer-employee relations by providing a legal framework for resolving disputes. Section 2 of the Act defines 'employer' as any individual, organization (whether legally incorporated or not), government entity, or statutory body that hires a worker under an employment contract. The Act also defines 'workman as any individual, including apprentices who is hired by an employer under an employment contract in exchange for wages or other compensation. While 'contract of employment' is defined in the same Act as a formal or informal agreement, whether verbal, written, stated, or implied, in which one party (the employer) hires another (the employee) to perform work under terms of employment (Section 2 of the IRA 1967).

Another important Act that relates to the issue is the Employment Act 1955 (EA 1955). This Act is another Malaysia's labor law governing the rights and obligations of employees and employers in the private sector. Similar as the IRA 1967, the act defines the parties protected under the Act. Section 2 of the Act defines 'employee' as those who are listed in the First Schedule, which is those who enters a contract of service. The same section defines 'contract of service' as any formal or informal agreement, either verbal, written, expressed, or implied, where one party (the employer) hires another (the employee) under terms of employment (Section 2 EA 1955).

Therefore, e-hailing platforms in Malaysia will not be liable for any negligent act committed by their drivers, which later cause injuries to passengers. The reason is the same as the position in New Zealand, which is because the drivers are considered as independent contractors, not employees. In addition, there are no specific laws or sections in EA 1955 or IRA 1967 that covers the issue.

**Consumer Protection Act 1999 (Act 599)**

One of the laws in Malaysia that plays a growing role in safeguarding the rights of e-hailing passengers, while also addressing the welfare of e-hailing drivers is the CPA 1999. This law provides consumer protection and applies to all goods and services unless specifically excluded (Section 2(1) of the CPA 1999). It establishes mechanisms such as an advisory body and a dedicated Consumer Tribunal, which offers a platform for resolving disputes between consumers and service providers efficiently and affordably (Ahmed and Ibrahim, 2018). The Act covers issues such as misleading advertising (Part II CPA 1999), unsafe goods or services (Part III CPA 1999) and unfair contract terms (Part IIIA CPA 1999).

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Section 3(1) of CPA 1999 defines 'consumer' as those who obtains or makes use of goods or services typically intended for personal, domestic, or household use or consumption while the word 'services' includes accepting a service in any manner. Therefore, e-hailing services falls under the definition of services and passengers are consumers entitled to protections under the law. The Act provides the power to the Minister to prescribe safety standards for not only goods or classes of goods, but also services or classes of services. This provision allows the government to impose mandatory safety requirements on businesses, including e-hailing services, to protect consumers from harms (Section 19(1) CPA 1999). When no specific safety regulations have been prescribed under Section 19(1), there is a general duty of care on suppliers of goods or services (including e-hailing platforms and drivers) to maintain a reasonable standard of safety expected by consumers (Section 19(4) of the Act).

Section 25(1) is about the penalties for violating Parts II and III of the CPA 1999, which include Section 19(1) of the Act. Thus, if an e-hailing platforms or drivers violates these provisions in Part II or Part III, they commit an offence and face penalties under this section. These penalties differ depending on whether the offender is a corporate entity or an individual. For corporate entities, if found guilty of a first offense faces a maximum fine of RM250,000. Should the same company commit subsequent violations, the penalty increases significantly, with fines reaching up to RM500,000 (Section 25(1)(a) CPA 1999). Individuals who breach these provisions as a first offense may be fined up to RM100,000, imprisoned for a maximum of three years, or subjected to both penalties at the court's discretion. Repeat offenders face harsher punishment, with fines increasing to RM250,000 and potential imprisonment extending to six years (Section 25(1)(b) CPA 1999).

Nevertheless, in Malaysia, there is no specific safety regulations for e-hailing drivers. Thus, there is a general duty of care on the part of the e-hailing platforms and drivers to act according to the standard of care required of them. In addition, there is no specific section in the CPA 1999 that specifically discusses the position of passengers as consumers who suffers injuries because of the negligent committed by the e-hailing drivers and whether the passengers can bring an action against the e-hailing platforms for the wrongful act committed by the drivers.

**Findings and Recommendations**

In Malaysia, e-hailing drivers operate in a grey area as there are no specific cases or laws addressing their liability for their negligence. Furthermore, the question of whether e-hailing platforms can be held vicariously liable for their drivers' actions remains unresolved, creating uncertainty for passengers seeking justice. The important Act such as the IRA 1967 and the EA 1955 do not specifically address the issue involving e-hailing drivers, as those drivers are generally classified as independent contractors (self-employed) rather than traditional employees under both Acts. Both Acts also do not cover self-employed/gig workers (e.g., e-hailing drivers and only applicable to private sector employees. Therefore, e-hailing drivers are not deemed as 'workman' or 'employee' under the laws in Malaysia, thus making them not entitled to the same benefits and protection as conventional workers. As a result, the Malaysian e-hailing driver community does not been provided with insurance or takaful coverage through their employment by the e-hailing service providers (Isa, 2024).

The absence of specific laws governing e-hailing driver negligence in Malaysia forces victims to seek redress through other laws including action under the tort of negligence and CPA 1999. Passengers injured by an e-hailing driver's negligence can file a civil lawsuit against the driver

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personally by proving the elements of negligence. However, the issue is the e-hailing platforms will not be vicariously liable under the law of tort as the drivers are not considered as employees but falls under independent contractors. On the other hand, the CPA 1999 covers issues like false advertising, overcharging, or failure to deliver promised services. The Act does not hold e-hailing platforms vicariously liable for their drivers' negligence unless a contractual term is violated.

As a result, few legal scholars argue that e-hailing platforms should bear liability due to their operational control and financial benefit. In fact, suggestions are made to amend the definition of employer and employee as stated in the IRA 1967 and EA 1955 to include the e-hailing drivers (FMT, 2021). In addition, it is important to introduce specific laws that holding platforms vicariously liable for drivers' negligence, like the position in the UK.

Similarly, the Malaysian Bar Council has called for legislative reforms to clarify e-hailing drivers' employment status. The Malaysian Bar has welcomed the proposed Gig Workers Bill 2025 (the Bill) as a legislative effort to address the legal ambiguities and social vulnerabilities faced by gig workers, including the e-hailing drivers who have always been classified as independent contractors. The Bill will provide a definition of gig workers, detail reasonable compensation standards, grievance mechanism, and enhanced social security provisions (Abdul Wahab, 2025).

Therefore, the objectives of this article have been successfully achieved by examining the liability of e-hailing platforms in negligence cases involving drivers, with a specific focus on the gaps in Malaysia's legal framework and consumer protection laws. The article delved into the principle of vicarious liability, analyzing its applicability to e-hailing platforms and assessing whether injured passengers can seek compensation directly from these platforms or must rely on drivers' personal liability. Additionally, it explored the Consumer Protection Act 1999, identifying statutory gaps that underscore the need for legislative reforms to better regulate e-hailing services.

By proposing measures such as amending existing laws to explicitly address e-hailing platforms, the article contributes to the ongoing discourse on adapting legal frameworks to technological advancements while ensuring robust consumer protection. Thus, the research has fulfilled its aim of providing insights into legal accountability and advocating for necessary regulatory improvements in Malaysia's e-hailing industry.

## Conclusion

In Malaysia, vicarious liability for e-hailing drivers hinges on proving an employer-employee relationship and establishing that the tort occurred within the scope of employment. While no landmark Malaysian cases yet address vicarious liability for e-hailing drivers clearly, existing precedents suggest courts would apply the tests focusing on control and scope of employment. As the service of e-hailing evolves, it is important for the Malaysian legal system to confront this issue directly and clearly to safeguard victim's right as well as protecting the right of e-hailing drivers.

This article highlights the inadequacy of current laws, particularly the lack of clear vicarious liability provisions under the EA 1955 and insufficient protections under the CPA 1999. Comparative analysis with jurisdictions like the UK and New Zealand underscores the need

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for legislative reform to clarify e-hailing platforms' legal responsibilities. To ensure passenger protection while sustaining industry growth, Malaysia must amend existing laws to explicitly define platform liability and strengthen redress mechanisms. Such reforms would not only enhance passenger safety but also provide legal certainty for all parties in the evolving e-hailing sector. It is hoped that the article might contribute to the understanding of how traditional vicarious liability principles apply to e-hailing platforms, while identifying gaps for future research as well as encouraging e-hailing platforms to strengthen passenger protections and insurance coverage. Most significantly, the article demonstrates the urgent need to amend the relevant laws in Malaysia to properly regulate e-hailing services and proposing legal reforms that would better protect passengers while supporting the growth of this sector in the country.

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