

## Analysing The Legal Status Of Interns Under Malaysian Employment Law

*(Analisis Status Perundangan Pelatih di Bawah Undang-Undang Pekerjaan Malaysia)*

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### ABSTRAK

Kertas ini mengkaji status perundangan bagi pelatih industri dan sukarelawan di bawah undang-undang pekerjaan Malaysia, dengan penekanan pada Akta Kerja 1955 (EA 1955) dan undang-undang berkaitan. Pelatih industri dan sukarelawan sering berada dalam kedudukan yang samar dalam pasaran buruh, menyebabkan cabaran dalam menentukan hak dan perlindungan mereka. Kajian ini meneliti sama ada pelatih dan sukarelawan layak dianggap sebagai pekerja di bawah undang-undang Malaysia, menganalisis tanggungjawab majikan berkaitan dengan imbuhan, waktu kerja, dan faedah, serta mengetengahkan jurang dalam kerangka perundangan sedia ada. Melalui analisis perundangan, wawancara dengan pihak berkepentingan, dan kajian perbandingan dengan bidang kuasa antarabangsa, kertas ini mengenal pasti isu-isu utama dan mencadangkan langkah praktikal dan dasar untuk memastikan kejelasan dan keadilan bagi kedua-dua pihak. Penemuan ini bertujuan untuk membimbing majikan, pembuat dasar, dan individu dalam menangani kekaburan undang-undang berkaitan pelatih industri dan sukarelawan di Malaysia.

Kata kunci: latihan industri, Akta Kerja 1955, perlindungan, hak, gaji

### ABSTRACT

*This paper examines the legal status of internships and volunteering under Malaysian employment law, with a focus on the Employment Act 1955 (EA 1955) and related statutes. Interns and volunteers often occupy ambiguous positions within the labor market, creating challenges in determining their rights and protections. The paper explores whether interns and volunteers qualify as employees under Malaysian law, analyzes employer obligations regarding compensation, working hours, and benefits, and highlights potential gaps in existing legal frameworks. Through legal analysis, and a comparative study with international jurisdictions, the paper identifies key issues and proposes practical and policy-level recommendations to ensure clarity and fairness for both parties. These findings aim to guide employers, policymakers, and individuals in addressing the legal ambiguities surrounding internships and volunteering in Malaysia.*

*Keywords: internships, Employment Act 1955, protection, wage, rights*

### PROBLEM STATEMENT

In Malaysia, the legal status of internships and volunteering is unclear, leading to potential exploitation and uncertainty about rights and protections.<sup>1</sup> In first world countries such as the USA, unpaid internships have been a ubiquitous status, due

to non-protection of legal establishments.<sup>2</sup> The mode of unpaid internships became widespread during the 2008 Great Recession and subsequent slow job recovery led to a rise in unpaid internships as recent graduates faced high unemployment rates and sought to gain a competitive edge in a challenging labor market.<sup>3</sup> This creates challenges for

interns, volunteers, and organizations in understanding their obligations and entitlements under the law.

## INTRODUCTION

Internships bridge the gap between education and employment, providing students with opportunities to acquire practical experience. They enhance employability by providing practical skills that go hand in hand with academic knowledge.<sup>4</sup> However, difficulties occur because certain internships do not offer adequate remuneration or no remuneration at all. The reason for this is that interns may not have clearly defined employment rights and benefits. To sum up, their protection under employment laws is limited. The Malaysian Employers Federation (MEF) expresses concern that if companies are mandated to provide allowances for interns, the increased hiring costs could result in a reduction of available internships. Nevertheless, a lack of adequate legal protections for many interns is evidenced by reports detailing the prevalence of unpaid and unregulated internships.

The Malaysian Employment Act 1955 addresses general employment practices, but it does not specifically include provisions for internships. This has led to a degree of uncertainty concerning the legal rights of interns. To tackle this issue, the government has recently asked for a minimum intern allowance of RM800 to be established. The aim is to enhance working conditions and guarantee that interns are compensated fairly.<sup>5</sup> Even with advancements, difficulties remain since Malaysian interns frequently lack vital benefits such as minimum wage, healthcare assurances, and whistleblower protections. At the same time, nations such as the UK have set up legal limits that categorize interns as workers, employees, or volunteers, which directly influences their eligibility for

protections like the National Minimum Wage.<sup>6</sup> This study will examine the legal safeguards for interns in Malaysia, the UK, and Australia, emphasizing shortcomings in Malaysian legislation and proposing potential enhancements.

In addition to that, this analysis will investigate the legal protections for interns, focusing on minimum wage requirements, discrimination and whistleblower protections, as well as health and safety regulations. This paper seeks to highlight the need for more robust and clearer regulations to avert the exploitation of interns and ensure that internships foster both educational and professional growth, by contrasting Malaysia's developing policies with established frameworks in Australia and the UK. The analysis will draw on a variety of sources, including legal documents, media articles, and academic research, with special attention to those that emphasize the lack of legal oversight and the precarious circumstances of unpaid interns in Malaysia.

## OBJECTIVE OF STUDY

This research examines the legal dimensions of internships in Malaysia, with particular emphasis on the Employment Act 1955 and associated legislation. Its goal is to establish the legal status of interns, looking into their rights and duties. The aim of the study is to detect any inconsistencies or deficiencies in legal protections, especially those that could result in the exploitation or unjust treatment of interns.

Additionally, the study will examine the regulation of internships and volunteering in other countries such as the UK and Australia for comparison. It will identify the most effective methods by which these other legal systems ensure that interns are treated fairly, receive minimum wages, and work in safe conditions. In light of these findings, the

study will propose legal amendments in Malaysia aimed at addressing the issues identified in the current system and improving conditions for interns and volunteers. The recommendations ultimately seek to create a legal environment that is more equitable and secure for these vulnerable groups in Malaysia.

## METHODOLOGY

This study employs a qualitative approach, taking into account both direct and indirect sources. The research will conduct a thorough examination of legal documents pertaining to Malaysian employment law, including statutes, regulations, and court rulings. This encompasses the Employment Act 1955, Industrial Relations Act 1967, and the Minimum Wages Order. This analysis will uncover the legal framework governing interns and volunteers in Malaysia. Furthermore, indirect sources such as legal analyses, scholarly articles, and reports concerning internships and volunteers will be examined. These will offer a wider comprehension of the subject and underscore pertinent legal debates.

Furthermore, a doctrinal approach is utilized in this research to examine laws governing internships and volunteer work in Malaysia. It reviews legal documents, court rulings, and case studies to gain insight into the ways courts address employment disputes involving volunteers and interns. The research seeks to illuminate the legal framework governing internships, including interns' rights and status under employment laws, by examining these sources. This method offers a comprehensive basis for evaluating the existing legal safeguards for interns in Malaysia.

## GENERAL FRAMEWORK IN MALAYSIA

## EMPLOYMENT ACT 1955

Malaysia's primary labor law is the Employment Act 1955 (EA 1955). It details the responsibilities and entitlements of both employees and employers. The Act has been made more comprehensive by recent changes; it is now known as the Employment (Amendment) Act 2022. The Act now provides protection to a larger number of workers, including those with higher incomes and those employed by businesses with a smaller workforce.<sup>7</sup> In the past, only low-income workers were granted explicit protection under labor laws. The framework has now broadened its scope to protect a greater number of employees. Nonetheless, some exceptions are still applicable for individuals with high incomes and those employed in particular job types, including drivers, domestic workers, and manual laborers. Even with these exemptions, these workers retain their entitlement to fundamental protections such as limits on working hours and compensation for overtime.<sup>8</sup>

The 2022 amendment introduced substantial changes, including the reduction of the maximum workweek from 48 to 45 hours.<sup>9</sup> This adjustment aligns Malaysia with international standards and highlights the importance of work-life balance. Following this amendment, more benefits are attached for these employees such as annual leave that accrues with tenure, maternity leave of 98 days, and not to forget, implementation of provisions for paternity leave.<sup>10</sup> These modifications demonstrate Malaysia's dedication to assisting working parents and enhancing gender equality in the workplace.<sup>11</sup> Moreover, the minimum wage has been increased to RM1,500 across the country, establishing a benchmark for equitable remuneration.<sup>12</sup> Nonetheless, its introduction has sparked discussions in sectors such as hospitality, with certain

employers arguing that it increases expenses.<sup>13</sup>

In addition to the aforementioned stipulations, the Act places a priority on safeguarding employees against workplace misconduct and exploitation. It is essential for employers to take action in probing into and dealing with complaints of sexual harassment and discrimination.<sup>14</sup> Moreover, the Act has established forced labor as an illegal practice, with offenders facing harsh punishments such as imprisonment and monetary penalties. These amendments demonstrate a firm position on safeguarding employees' welfare and fostering ethical labor practices. They collectively show Malaysia's efforts to update its labor laws and establish a fairer work environment for everyone.

#### OTHER MALAYSIAN EMPLOYMENT LAWS

From a legal standpoint, internships in Malaysia are intricate and can be bewildering at times. While the Employment Act of 1955 offers protection for employees, interns are typically excluded from this coverage. Internships are intended to be brief experiences that provide practical training and exposure to the work environment. Nevertheless, due to the absence of a clear legal definition for internships, their treatment remains ambiguous. This can result in interns receiving different treatment and, at times, being exploited.<sup>15</sup>

Although Malaysian laws are silent in this matter, but people undergoing internships are safeguarded by various employment laws, not just the Employment Act 1955. These laws grant interns rights and protections in certain areas, as detailed below:

#### a) WHISTLEBLOWING PROTECTIONS

The purpose of the Whistleblower Protection Act (2010) is to protect individuals who disclose misconduct in their work environment. Its purpose is to shield whistleblowers from reprisals, including job loss or other forms of discipline. Most employees are covered by the Act. Keep in mind that interns who perform actual tasks (beyond just shadowing) may also be eligible for protection. This protection is applicable only when good-faith concerns are brought to the relevant enforcement agencies.<sup>16</sup> Interns reporting misconduct (such as corruption or abuse of power) to these agencies are protected from legal actions, criminal proceedings, and disciplinary measures. Nonetheless, reporting directly to one's employer does not offer this safeguard.

#### b) HEALTH AND SAFETY PROTECTIONS

The goal of the primary legislation in this aspect, which is the 1994 Occupational Safety and Health Act (OSHA) is to protect health and safety in the workplace. Employers should put the well-being of their employees, interns included, at the forefront. This entails evaluating risks, supplying protective equipment and training, and implementing suitable safety measures. It is the duty of interns to adhere to workplace safety guidelines. If they encounter unsafe conditions, they can report these to the Department of Occupational Safety and Health (DOSH).<sup>17</sup>

#### c) MINIMUM WAGE PROTECTIONS

The Minimum Wages Order 2022 in Malaysia establishes a minimum wage of RM1,500.<sup>18</sup> The necessity for interns to comply with this minimum wage requirement is dependent upon their employment status as

defined by the Employment Act 1955.<sup>19</sup> The "Control Test" and "Integration Test" are used to determine if an intern is regarded as an employee under Malaysian law.<sup>20</sup> The degree of control the employer has in managing or supervising the intern's job and how closely the intern's tasks correspond to the business's core functions are assessed by these tests.<sup>21</sup> Interns who perform essential duties may be regarded as employees subject to minimum wage laws if their employer exerts considerable control over them.<sup>22</sup>

Interns whose work enhances their employer's productivity are typically eligible for at least the minimum wage. Nevertheless, internships that concentrate mainly on offering educational or vocational training, without the demand for considerable productive work, do not fall under specific regulations in Malaysian law. In such instances, there is no legal obligation for employers to compensate the interns with wages.

#### d) ANTI-DISCRIMINATION PROTECTIONS

Countries such as the UK and Australia have specific legislation aimed at preventing workplace discrimination, whereas Malaysia lacks such laws. The Federal Constitution, particularly Article 8 guarantees equality and prohibits discrimination based on certain factors. However, these protections have not been fully extended to interns' employment protections.<sup>23</sup> Since the Employment Act of 1955 does not cover workplace discrimination, it poses a challenge for interns to legally contest discriminatory practices. While some organizations might implement internal anti-discrimination policies, there is no legal requirement for them to do so.

#### e) TRAINING AND VOCATIONAL INTERNSHIPS

Internships associated with formal education (such as university industrial training) typically fall outside the scope of labor laws.<sup>24</sup> Such interns usually do not have wage entitlements or protections as outlined in the Employment Act 1955. Nevertheless, initiatives spearheaded by the government, such as apprenticeships or upskilling programs, might provide interns with specific protections and benefits. These initiatives are frequently backed by the Human Resources Development Fund (HRDF) and concentrate on offering training to Malaysian citizens in areas of high demand.

An intern differs from an employee in that the former does not have a formal contract. Interns, particularly those who are unpaid or whose work is considered part of their education or training, are often not recognized as employees under a specific law (EA 1955).<sup>25</sup> This implies that interns do not receive benefits such as pension contributions (Employees Provident Fund (EPF), coverage under the Social Security Organisation (SOCSO)), paid leave, or equitable dismissal procedures.<sup>26</sup> The lack of clarity in the law has led some employers to exploit internships for free or low-cost labor, resulting in a system that harms young workers.<sup>27</sup>

Unpaid internships in Malaysia remain a contentious issue, especially for recent graduates aiming to gain work experience. Although internships offer a significant opportunity to acquire new skills and network, the prevalence of unpaid positions prompts inquiries regarding their fairness and accessibility.<sup>28</sup> Because unpaid full-time work is expected of them, many interns face financial difficulties. As a result, only those who have sufficient financial resources can take advantage of these opportunities. This exacerbates social inequality and complicates career

advancement for young individuals from disadvantaged backgrounds.<sup>29</sup>

The Malaysian government has initiated some efforts to supervise and enhance the conditions of interns, prompted by worries regarding their well-being. Interns in the public sector now receive stipends again, providing some financial assistance. Nonetheless, the lack of control over private sector activities complicates the assurance of fair treatment for interns.<sup>30</sup> A more thorough approach is needed to solve the problems that internships have at their core.

It is essential to establish a thorough internship policy in Malaysia to ensure equal opportunities and adequately prepare youth for the workforce. This policy ought to delineate the rights and responsibilities of both interns and employers, guaranteeing that internships serve as a meaningful bridge between education and work. Tackling these issues will promote a more supportive and inclusive atmosphere for future employees and aid in Malaysia's social and economic advancement.<sup>31</sup>

## COMPARATIVE ANALYSIS

### UNITED KINGDOM

#### a) EMPLOYMENT STATUS AND MINIMUM WAGE PROTECTIONS

In the UK, interns are categorized as workers, volunteers, or employees, which influences their eligibility for rights such as minimum wage, vacation time, and legal protections. Regulating internships, particularly distinguishing between paid and unpaid ones, is significantly governed by the National Minimum Wage Act (1998).<sup>32</sup> Unless they fit certain exceptions, interns categorized as "workers" usually qualify for minimum wage.<sup>33</sup> An intern is deemed a worker if they have a personal services contract, receive

payment or have a promise of future employment, and carry out tasks vital to the company's functioning.<sup>34</sup>

The government website states that interns are entitled to the National Minimum Wage (NMW) if their responsibilities involve contributing to the business's productivity, such as working on projects, assisting customers, or participating in operations.<sup>35</sup> However, unpaid internships are allowed when the intern's role is purely observational (shadowing), as this does not qualify as "work."<sup>36</sup> Also, if an intern's placement as part of a UK educational curriculum lasts less than a year, they are exempt from the NMW. By differentiating between paid and unpaid internships, this distinction sets out the responsibilities of employers and provides protection for interns.

#### b) HEALTH AND SAFETY PROTECTIONS

The Health and Safety at Work Act of 1974 provides protection for interns under UK law. It is essential for employers to put the welfare of their employees first, which also applies to interns who are treated as workers.<sup>37</sup> It is mandatory to conduct risk assessments, provide safety equipment, and offer suitable training to ensure workplace safety. This is particularly crucial in high-risk industries such as healthcare and construction.<sup>38</sup> As a result, practical work interns are afforded the same legal protections as regular employees.

It is the duty of employers to safeguard the health and safety of their interns.<sup>39</sup> It is essential that they offer adequate oversight, instruction, and details regarding possible dangers or risks linked to their responsibilities. As an example, interns in manufacturing need sufficient training for safe machinery operation.<sup>40</sup> This is in

accordance with the standards set by the International Labour Organization (ILO), which require that health and safety measures be applied to all forms of work-based learning, with the well-being of interns prioritized irrespective of their status.<sup>41</sup> Interns, even those whose role is mainly observational, may encounter risks; therefore, it is essential for employers to ensure a safe working environment for these individuals.

#### c) DISCRIMINATION AND WHISTLEBLOWING PROTECTIONS

The Equality Act of 2010 provides legal protections for interns in the UK. This legislation prohibits any form of discrimination either if it is based on gender or sexual orientation or religious beliefs etc.<sup>42</sup> Interns classified as employees or workers enjoy the same legal protections as full-time staff members. This implies that they cannot be subjected to unfair treatment during their internship due to these protected characteristics. It is prohibited to discriminate when hiring, during internships, and when terminating interns.<sup>43</sup> By law, employers must create a work environment free from harassment and bias, ensuring that interns have the same chance to succeed.

Interns who report illegal or unethical actions during their placements are afforded additional protections under the Public Interest Disclosure Act 1998. This safeguard stops retaliatory actions, dismissals, or other forms of punishment.<sup>44</sup> This is vital for interns, as their status as temporary employees may leave them exposed.<sup>45</sup> The Act gives interns the authority to report unsafe practices, fraud, or discrimination without fear of repercussions such as lost opportunities or adverse evaluations.<sup>46</sup> While whistleblower protections usually cover interns who qualify as "workers" or

"employees," the UK's legal framework seeks to promote transparency and accountability in the workplace for all individuals, including interns.

#### d) EDUCATIONAL AND REGULATORY FRAMEWORKS

In numerous higher education contexts, internships are overseen by guidelines aimed at ensuring students gain educational value. The United Kingdom does not have a national law that regulates internships; instead, it follows voluntary standards and quality frameworks.<sup>47</sup> For instance, the Quality Framework for Traineeships (QFT) developed by the European Union highlights the necessity of written agreements that detail learning objectives, assigned tasks, and supervision arrangements.<sup>48</sup> The purpose of these voluntary measures is to guarantee that internships are not misused as substitutes for paid work, but rather provide significant learning experiences.

In short, this analysis investigates the UK's internship framework, highlighting the interconnectedness of job status, pay entitlements, workplace safety, anti-discrimination laws, and educational standards within this context. While the legal framework provides crucial safeguards, there are areas that need improvement, particularly regarding unpaid internships and the implementation of minimum wage regulations. This report incorporates insights from the ILO Working Paper and UK government resources to analyze the framework in line with current global and local standards.

### AUSTRALIA

#### a) WHISTLEBLOWING PROTECTIONS

In Australia, the Fair Work Act 2009 and Corporations Act 2001 protect whistleblowers. The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 provides additional protections for those who report wrongdoing, illegal actions, or legal violations.

When interns are regarded as employees, they benefit from legal protections that allow them to report misconduct within the company without fear of termination or retaliation.<sup>49</sup> As part of this protection, individuals are informed about matters such as criminal acts, fraudulent activities, unethical practices, and violations of workplace regulations. However, when interns are categorized as students on a vocational placement, they might not enjoy the same level of protection since they are not regarded as employees.<sup>50</sup>

#### b) HEALTH AND SAFETY PROTECTIONS

The Work Health and Safety (WHS) regulations primarily govern work health and safety laws in Australia. These laws, which follow a national model, can vary slightly from state to state. The laws guarantee protection for both employees of a company and interns performing job-like duties.

According to the WHS Act of 2011, interns classified as employees are entitled to the same health and safety rights at work as regular employees. This includes having a safe workplace, access to proper tools, and receiving safety training. An alternative method is to make it visible, thereby informing people when they encounter things that are unsafe or hazardous.<sup>51</sup> These safeguards generally cover interns who are gaining practical work experience in workplaces that follow WHS regulations. However, the level of legal protection interns

have if they are hurt or the work conditions are unsafe may vary.<sup>52</sup>

#### c) MINIMUM WAGE PROTECTIONS

In Australia, interns considered employees are given the same legal protection for minimum wage as stated in the Fair Work Act 2009. All employees, including those working casually, must receive the minimum wage if they do any work that would normally be paid for. Interns who are assigned productive tasks are covered by minimum wage laws. From 2025, the minimum wage for full-time employees in Australia will be \$22.33 per hour.<sup>53</sup> Interns do not need to be paid if their internship is part of an educational program that qualifies as a vocational placement under the Fair Work Act.<sup>54</sup>

#### d) ANTI-DISCRIMINATION PROTECTIONS

In Australia, interns deemed employees are protected by anti-discrimination laws. This body of legislation encompasses the 2009 Fair Work Act, along with numerous state and federal anti-discrimination laws, including the Racial Discrimination Act 1975, Sex Discrimination Act 1984, and Disability Discrimination Act 1992. These laws protect interns from discrimination due to factors like race, gender, age, and disability.<sup>55</sup> Workplace misconduct such as unequal treatment or harassment is against the law. In cases of discrimination, interns are entitled to lodge complaints with the Fair Work Commission or other human rights bodies.<sup>56</sup>

The Fair Work Ombudsman (FWO) in Australia oversees compliance with labor laws by businesses. They have pursued legal action against companies for mislabeling unpaid interns. It can be difficult to discern when unpaid work transitions into a job,



however. According to reports, clarifying laws, improving collaboration among various groups, and increasing educational information campaigns are necessary to address this issue.<sup>57</sup>

Government bodies such as the Tertiary Education Quality and Standards Agency (TEQSA) oversee internships associated with accredited programs, guaranteeing a certain level of quality. However, exploitation is a risk for students and job seekers, particularly in the case of informal internships.

The Fair Work Ombudsman (FWO) enforces employment laws and has pursued legal action against companies that misrepresent unpaid interns.<sup>58</sup> However, it may be difficult to determine when unpaid work transitions into employment. Experts recommend enhancing legal clarity, involving all stakeholders, and providing education to tackle these issues.<sup>59</sup>

Internships associated with accredited programs are overseen by government organizations such as TEQSA.<sup>60</sup> This protection does not apply to all internships, however. In poorly regulated internships, students and job seekers can still be exploited.<sup>61</sup>

In short, both the United Kingdom and Australia, interns are afforded extensive protections, particularly those classified as employees or workers. Protections encompass the rights to report misconduct (whistleblowing), receive fair compensation (minimum wage), work in safe conditions (health and safety), and be free from discrimination. Nonetheless, the legal protections for unpaid internships and vocational training programs are limited in both countries.

## RECOMMENDATIONS

In order to enhance internship practices and further combat the challenges this issue curtails, there needs to be regulation that is more stringent. It is recommended to amend the Employment Act to incorporate regulations tailored for interns, recognizing them as a distinct category from regular employees, particularly in the context of vocational and educational programs. Moreover, there should be legislation enacted that safeguards all interns. Measures based on the International Labour Organization (ILO) guidelines have been attempted by Australia and the UK. On the other hand, in both Australia and the UK, it is mandatory to pay interns who carry out productive tasks at least the minimum wage, which guarantees equitable remuneration. A prominent instance is the National Minimum Wage Act 1998 in the UK.<sup>62</sup> In contrast to certain nations, the Health and Safety at Work Act (1974) in the UK and the Work Health and Safety Act (2011) in Australia explicitly require employers to establish safe working conditions for all employees, interns included. In these countries, unpaid interns are afforded the same health and safety protections as paid employees. This encompasses compulsory training and protective equipment to guarantee their welfare while performing their duties.<sup>63</sup>

## SUMMARY

To recapitulate, after close deliberation, it can be deduced that this paper analyzed the legal rights of interns in Malaysia, highlighting gaps in their protection, mainly in pay, work conditions, and legal recognition. The analysis revealed that Malaysia provides less protection for interns compared to the UK and Australia, leading to potential exploitation. On that note, it is for the writer that it is formidable to impose measures like revising the Employment Act 1955 and adopting international standards to ensure fair treatment of interns and make

internships more beneficial for their professional growth. Strengthening Malaysia's legal framework will foster a fairer and more productive internship culture.

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## NOTES

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<sup>17</sup> Section 16 and 17 of Occupational Safety and Health Act 1994 (Act 514)

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<sup>19</sup> Section 2 Employment Act 1955 (Act 265)

<sup>20</sup> Chye Hin Co. (Perak) Ltd v Public Prosecutor [1960] MLJ 137

<sup>21</sup> Cassidy v Ministry of Health [1951] 2 KB 343; See also Short v Henderson [1946] 62 TLR 101, Control Test now evolved to Multiple Test, now applied in Malaysia; Bata Shoes Company (Malaya) Ltd v Employees Provident Fund Board [1976] 1 MLJ 120

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